



ANTICIPATORY MEDIA LINES ATI 2015-13377

Date: October 28, 2016

For use by CBSA spokespersons only

Issue

ATI 2015-13377 will be released November 25, 2016 and contains documents on professional standards investigation reports of alleged misconduct of CBSA employees. Media interest could result from this release.

Media lines

- The Agency has no tolerance for any illegal or inappropriate actions.
- In instances of alleged workplace misconduct, there is an internal process in place for conducting an investigation.
- Appropriate action and discipline, if warranted, is taken to address such matters. All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and acted upon accordingly.
- It is not a practice of the CBSA to comment on individual cases.
- CBSA employees are held to a very high standard and are expected to conduct themselves professionally and in accordance with the Values and Ethics Code for the Public Sector, the CBSA Code of Conduct, its policies and core values.

Prepared by:	In consultation with:	Approved by:
Alexis English Communications Advisor, HR and Comptrollership Communications	Dawn Lockwood Manager, HR and Comptrollership Communications	Ken McCarthy (approved) Director, Security and Professional Standards Al Campbell (approved) Director, Labour Relations and Compensation Marc Thibodeau (approved) DG, Labour Relations and Compensation Nancy Archipow (approved) Director, Public Affairs and Strategic Communications Erika-Kirsten Easton DG, Communications

Canada Border
Services AgencyAgence des services
frontaliers du Canada

Border Services



Services frontaliers

ANTICIPATORY MEDIA LINES**ATI 2016-14451****Date: December 12, 2016****For use by CBSA spokespersons only****Issue**

ATI 2016-14451 will be released on December 13, 2016 and contains a document on professional standards investigations related to harassment. Media interest could result from this release.

Media lines

- The Canada Border Services Agency has no tolerance for any illegal or inappropriate actions.
- In instances of alleged workplace misconduct, there is an internal process in place for conducting an investigation.
- Appropriate action and discipline, if warranted, is taken to address such matters. All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and acted upon accordingly.
- It is not a practice of the CBSA to comment on individual cases.
- CBSA employees are held to a very high standard and are expected to conduct themselves professionally and in accordance with the Values and Ethics Code for the Public Sector, the CBSA Code of Conduct, its policies and core values.

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Guibert-Wolff, Line

From: Guibert-Wolff, Line
Sent: November 4, 2016 11:06 AM
To: Bouchard, Cindy
Cc: Archipow, Nancy
Subject: RE: For President Approval / CAT 3 - Media Query CBC / Follow-up Stats request
Harassment complaints

Hello Cindy,

As requested, please see the previous response provided to the reporter.

Thank you.

Previous questions/response to reporter 2016-10-21

- Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?**
Q2. How many complaints of bullying have been filed within the agency within the last ten years?
Q3. How many investigations have resulted from complaints of harassment within the same time period?
Q4. How many investigations have resulted from complaints of bullying within the same time period?

A1-A4. The CBSA is able to provide you with statistics from 2014-2015 until present.

Between 2014-2015 until present, there have been 100 complaints of harassment made by CBSA employees. Please note that bullying is included within the harassment complaints. All allegations of harassment are taken seriously and are reviewed. The complainant and respondent may choose to participate in the CBSA Information Conflict Management System to resolve the situation through mediation. Of the 100 complaints, 33 resulted in investigations.

We can tell you the CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.

All CBSA employees are subject to a very strict codes of ethics and behaviour.

CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.

Line A. Guibert-Wolff

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From: Bouchard, Cindy
Sent: November 4, 2016 10:59 AM
To: Guibert-Wolff, Line
Cc: Archipow, Nancy
Subject: RE: For President Approval / CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

In fact, could you resend the initial CBSA response to the reporter's first set(s) of questions?
What I found in my file was from I so I'm not sure I have the right set.
Thanks Line!
Cindy

From: Bouchard, Cindy
Sent: November 4, 2016 10:46 AM
To: Guibert-Wolff, Line
Subject: RE: For President Approval / CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Bonjour Line,

For A1, could you provide us with the numbers previously provided to the reporter?

Thanks,
Cindy

From: Guibert-Wolff, Line
Sent: November 4, 2016 10:32 AM
To: Gosselin, Gail; Lizotte-MacPherson, Linda; Namiesniowski, Tina
Cc: Ibrahim, Nesreen; Graham, Jason; Cl  roux, Julie; Roach, Lisa; CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Bouchard, Cindy; Mackenzie, Joey; Maisonneuve, M  lanie; Easton, Erika-Kirsten; Pich  , Jean-St  phen; Cloutier, Jacques
Subject: For President Approval / CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Good morning,

For approval. DG HR approved response to CBC follow-up questions on harassment complaints. The response is approved by the DG of Communications, VP HR and VP OPS.

Thank you.

Received: 20-16-11-01 / 11:50 ET

Media: CBC

Contact:

Deadline: Friday, November 4, 2016 - 17:00 ET

Issue: Harassment complaints - I am the reporter working with producer on a story about workplace harassment at CBSA. She had asked media relations for an account of how many complaints of workplace harassment/bullying had been filed within the agency within the last 10 years.
You provided statistics for the 2014-15 year until present - 100 complaints of harassment made by CBSA employees, with 33 of those resulting in investigations. I have a few follow-up requests for more statistical information.

Q1. Could you please provide us with the number of workplace harassment complaints, broken down by calendar year over the last five years?

A1. The CBSA currently does not have the comprehensive data set readily available to allow for an annual comparison on a longer period. Please find the data requested for 2014 to 2016.

2014/15	2015/16	2016/17
24	58	18

* Please note that the numbers differ slightly from what was previously provided because we updated the numbers to be from April 1, 2014 to November 1, 2016.

Q2. How many investigations were conducted into allegations of workplace harassment, broken down by calendar year, over the last five years?

A2.

2014/15	2015/16	2016/17
4	20	7

Q3. How many findings of harassment were made, broken down by calendar year, over the last five years?

A3.

2014/15	2015/16	2016/17
1	2	1

Q4. Of the investigations made in the last three calendar years, how many are complete?

A4.

2014/15	2015/16	2016/17
3	8	1

As of November 1, 2016, CBSA has 36 complaints open at various stages of the process.

Line A. Guibert-Wolff

Media Spokesperson | Porte-parole

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Bailey, Esme

From: Bailey, Esme
Sent: August 12, 2016 04:29 PM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: Pat for approval: CAT 3 media query sexual assault allegations (VICE)
Attachments: Policy on violence prevention in the workplace (E).pdf; A-2016-07579 (2).pdf

Hello Pat. For approval. A/DG Security and Professional Standards has approved. DG LR approved Q2. ATIP was consulted. Thanks. Esme

Time of call: August 10, 11:48 a.m.

Deadline: August 12, 17:00 ET (Reporter has been advised deadline will not be met)

Media: VICE

Contact:

Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
 - Directive on the Harassment Complaint Process <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26040>
 - Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hig-eng.asp>
 - Preventing and Resolving Harassment in the Workplace – A Guide for Managers <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hars-eng.asp>
 - Is it Harassment? A tool to Guide Employees <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/mibh-sjh-eng.asp>
 - Collective Agreements https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/coll_agre/siglist-eng.asp
 - Policy on Violence prevention in the workplace (document attached)
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**
- Were local police involved, or was it RCMP?**

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?**

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
- Why was the complaint found to be inconclusive?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

There was one victim in this case.
The complaint was first brought to the CBSA.

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Canada Border
Services Agency

Agence des services
frontaliers du Canada

VICE Media Studios Inc.
78 Mowat Ave.
Toronto, ON M6K 3M1

Dear :

This letter is in response to your *Access to Information Act* request.

The Canada Border Services Agency (CBSA) is committed to providing the highest level of client service and we would be pleased to assist you with any questions or concerns you may have regarding the handling of your request. You may contact Paulette Franklin at 343-291-6960 or by email at Paulette.Franklin@cbsa-asfc.gc.ca, using our file number as a reference.

Please refer to the following page for information on the processing of your request.

Yours truly,

Alain Belleville
Manager

Enclosure

Canada

CBSA Request Number	A-2016-07579 / PF
Your Request Number	
Request Summary	Any and all complaints of sexual assault received by the CBSA between January 1, 2003 and present, with personal information redacted. I would like summaries of each complaint, and a statistical report on the number of complaints of sexual assault. (...)
Request Disposition	Disclosed in part
The following line indicates which section(s) of the <i>Act</i> was (were) invoked by the Agency if the information was not all disclosed to you.	
Summary of the Exemption(s)/Exclusion(s)	19(1) Personal information of another individual
Link to the Access to Information Act	http://laws-lois.justice.gc.ca/eng/acts/A-1/
Comments	With the specific date, location and exact police force it would likely be possible to identify the individuals involved, particularly by colleagues, therefore the information was exempted as personal information (information that can identify an individual).
Address	Access to Information and Privacy Division Place Vanier Tower A 333 North River Road, 14th floor Ottawa, ON K1A 0L8
Should you be dissatisfied with the processing of this request, you may file a complaint within sixty days of receipt of this notice to the Information Commissioner of Canada by writing to: Office of the Information Commissioner of Canada 30 Victoria Street Gatineau, Québec K1A 1H3	

VIOLENCE PREVENTION PROGRAM

Policy on Violence Prevention in the Work Place

This policy comes into effect on April 1, 2011.

- General Policy Statement
- Definitions
- Authorities
- Purpose and Scope
- Background
- Specific Policy Statements
- Roles and Responsibilities
- References
- Appendices

General Policy Statement

1. It is the policy of the Canada Border Services Agency (CBSA) to provide a safe, healthy and violence-free work place by dedicating sufficient attention, resources and time to address factors that contribute to work place violence. These factors include, but are not limited to, bullying, teasing, and abusive and other aggressive behaviour. It is the policy of the CBSA to prevent and protect against violence in the work place. Further, the CBSA will inform employees about factors contributing to work place violence and will provide employees with clear procedures to follow should they encounter violence in the work place. Finally, the CBSA commits to assisting employees who have been exposed to work place violence.

Definitions

2. **Competent Person** – means a person who is impartial and is seen by the parties to be impartial; has knowledge, training, and experience in issues relating to work place violence; and has knowledge of relevant occupational health and safety legislation. For the purpose of this policy, the competent person is defined as the Regional Security Manager.
3. **Employee** – means a person employed by an employer [Subsection 122.(1) of the *Canada Labour Code*, Part II]. For the purposes of this policy, an employee includes all CBSA employees (indeterminate and determinate), casuals, students, Border Services Officer recruits, persons hired through temporary agencies, and consultants and contractors for whom an employer/employee relationship can be established.
4. **Employee Assistance Program (EAP) / Critical Incident Stress Management (CISM)** – EAP is a program designed to assist employees and their families by mitigating the impact of a critical incident and accelerating the recovery of those experiencing a reaction to a critical incident. The EAP promotes well-being at the CBSA. It is a confidential and free service that is available to all CBSA employees and their dependents. The CISM program responds to sudden and unusual events that can potentially overwhelm the coping skills of an individual or group.

CBSA ASFC

5. **Informal Conflict Management System (ICMS)** – an alternative approach to the prevention, management, and early resolution of conflict through a variety of means, such as alternative dispute resolution or other collaborative processes. It emphasizes collaborative problem-solving approaches and dialogue between those involved. It encourages a shift, when appropriate, from formal rights-based recourses to less formal interest-based processes such as dialogue, facilitation, and mediation.

6. **Person** – those individuals who work in the work place as well as individuals with whom the employee may come into contact while working, such as clients and the general public.

7. **Work place** – is defined in the *Canada Labour Code* as “any place where an employee is engaged in work for the employee's employer”. This includes any area where an employee is making a delivery for the employer, any location where an employee is providing a service under the employer's direction, and any mode of transportation (e.g., train, plane) where the employee is travelling in the course of business. It also includes attendance at conferences, seminars and training. It does not include parking lots not controlled by the employer, employees travelling to and from the work place outside working hours or locations hosting non-mandatory recreational activities that may be sponsored by the employer such as a company picnic or golf tournament.

8. **Work Place Violence** – constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

Authorities

9. *Canada Labour Code*, Part II - Paragraph 125.(1)(z.16)

10. *Canada Occupational Health and Safety Regulations* - Part XX – Violence Prevention in the Work Place

Purpose and Scope

11. The purpose of this policy is to establish a framework to prevent and protect employees from violence in the work place.

12. This policy applies to all employees, as defined by the Definitions section.

13. This policy will ensure that those who are subjected to violence in the work place are informed of the procedures for reporting, investigation and recourse and that assistance/counselling is available.

14. This policy is meant to complement, not replace, existing resources and should be read in conjunction with the CBSA Comptrollership Manual, Security Volume, Chapter 15: Reporting of Security Incidents; Chapter 26: Abuse, Threats, Stalking and Assaults Against Employees; Chapter 27: Internal Investigations into Alleged or Suspected Employee Misconduct; Policy on Use of Force Incident Reporting and Investigation; the Employee Assistance Program (EAP) Guidelines; the CISM Guidelines and Standard Operating Procedures; the CBSA Code of Conduct; and the ICMS Policy & Program Framework.

Background

15. The amendments to the *Canada Labour Code* that came into force on September 30, 2000, resulted in the increased responsibility for work place parties (employers and employees) to address occupational health and safety issues jointly in a more efficient and effective manner. Consequently, work place parties work together to ensure a healthy and safe working environment for all employees.

16. The *Canada Labour Code* states "the employer shall take the prescribed steps to prevent and protect against violence in the work place" [S. 125.(1)(z.16)]. The "prescribed steps" are outlined in the *Violence Prevention in the Work Place Regulation*.

17. This Regulation aims to improve employee safety by giving both employers and employees the tools needed to prevent and protect against work place violence.

Specific Policy Statements

18. All potential situations or occurrences of work place violence will be reported in accordance with the CBSA Comptrollership Manual, Security Volume, Chapter 15 – Reporting of Security Incidents and Chapter 26 – Abuse, Threats, Stalking and Assaults against Employees and, if applicable, Part XV of the Canada Occupational Health and Safety Regulation – Hazardous Occurrence Investigation, Recording and Reporting.

19. All reported incidents will be investigated in accordance with the applicable chapter of the Security Volume.

20. All reports involving work place violence must be sent to the Security and Professional Standards Directorate at Headquarters by the Regional Security Office using the Security Incident Report Form – BSF152.

21. If a Hazardous Occurrence Investigation Report (LAB1070) is also required, it must be sent to the Regional Occupational Health and Safety (OHS) Advisor after it is completed in accordance with existing procedures.

22. One of the ways the CBSA will assist employees who have been exposed to work place violence is through the Employee Assistance Program (EAP). EAP is available 24/7 in accordance with the Employee Assistance Program Guidelines and includes CISM defusing and debriefing following a critical incident in accordance with the Critical Incident Stress Management Guidelines and Standard Operating Procedures.

23. The Informal Conflict Management System (ICMS) process will continue to be available to all CBSA employees with the goal of fostering a respectful workplace by preventing, effectively managing, and promptly resolving conflict that may arise in the workplace. It is an important step toward preventing violence between workplace parties.

24. The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors (see Appendix C).

25. Emergency response to situations of violence will be in accordance with the Building Emergency Plan for each facility.

26. Violence Prevention in the Work Place awareness training will be required for all CBSA employees. Refresher training will be required every three years. Records of training will be maintained in the Corporate Administration System (CAS).

CBSA ASFC

27. The CBSA will not tolerate employees threatening, coercing or intimidating each other and will promptly and thoroughly investigate all reports of work place violence both internal (employee/employee) or external (employee/non-employee). Any disciplinary action taken will be in accordance with the *CBSA Discipline Policy*.
28. This policy and all aspects of the CBSA's Violence Prevention Program are accomplished in consultation with the Policy Health and Safety Committee.
29. The Policy Health and Safety Committee will continue to receive security incident reports on a quarterly basis. These reports include information on security incidents in four key areas – Assaults; Threats of Bodily Harm; Bomb Threats; and Suspicious Packages. Incidents of work place violence will be included, where not prohibited by law.

LIMITATION

30. When consulting with the Policy Health and Safety Committee or the Work Place Health and Safety Committee/Representative, management shall not disclose information whose disclosure is prohibited by law or could reasonably be expected to threaten the safety of individuals. The identity of those involved in any incidents of work place violence will not be revealed without their consent.

Roles and Responsibilities

31. The responsibility for interpretation of this policy and the Violence Prevention Program rests with the Director General, Labour Relations and Compensation Directorate.

Employees will:

- 32. Comply with this policy;
- 33. Attend training mandated under this policy;
- 34. Notify their supervisor of any disputes they have with other employees before the situation degenerates into violence. If the dispute is with the immediate supervisor, notify the next level of management or the Regional Security Manager;
- 35. Report potential situations or occurrences of work place violence to their supervisor;
- 36. Follow building emergency procedures; and
- 37. Cooperate with any person carrying out duties associated with this policy.

Supervisors will:

- 38. Comply with this policy and ensure all employees comply with this policy;
- 39. Ensure that their Building Emergency Plans are current and that step-by-step instructions for emergency notification are posted in the work place;
- 40. Ensure employee attendance at training that is mandated under this policy;
- 41. Evaluate the need for additional/refresher training on building emergency procedures;
- 42. Be diligent in the recognition of employee behaviour that could lead to violence;
- 43. Take all appropriate immediate actions to protect employees who have been exposed to violence;
- 44. Ensure appropriate reporting and investigation of work place violence incidents and potential incidents that are reported to them as per the CBSA Comptrollership Manual, Security Volume, specifically Chapters 15, 26, and 27 and Part XV of the Canada Occupational Health and Safety Regulations;
- 45. Ensure appropriate reports are completed and distributed;
- 46. Arrange for a Physical Threat and Risk Assessment should a previously unforeseen work place violence hazard be identified in order to implement appropriate controls;



47. Inform the work place health and safety committee/representative of all instances of work place violence, except where prohibited by law. The identity of those involved will not be revealed without their consent; and
48. Keep a record of all reports completed by a competent person.

District/Regional Directors will:

49. Participate in identifying violence prevention needs for facilities; and
50. Actively support and assist managers/supervisors in complying with this policy.

Comptrollership Branch

Security and Professional Standards Directorate (SPSD) will:

51. Analyze incidents of work place violence where required and prepare recommendations to management;
52. Participate in identifying violence prevention needs for facilities within Headquarters;
53. Actively support and assist managers/supervisors in complying with the policy;
54. Assist with the investigation and analysis of incidents of violence or potential incidents of violence as required;
55. Provide advice and guidance to the regions regarding the completion of Physical Threat and Risk Assessments;
56. Provide periodic reports on work place violence incidents to the Policy Health and Safety Committee; and
57. Fulfill additional responsibilities relative to violence in the work place as detailed in the CBSA Security Volume.

Regional Security Managers will:

58. Assist regional management with preventing and protecting against work place specific threats that may increase the risk for work place violence;
59. Provide advice to regional management on the applicable chapters of the CBSA Security Volume;
60. Conduct or direct the conduct of investigations into incidents of work place violence;
61. Ensure that the Security and Professional Standards Directorate at Headquarters are advised of any significant incidents;
62. Ensure that all reports involving work place violence are sent to the SPSP at Headquarters; and
63. Conduct, or direct the conduct of, Physical Threat and Risk Assessments.

Infrastructure and Environmental Operations will:

64. Ensure that methods for the prevention of violence are considered during construction and/or renovation of a CBSA facility; and
65. Provide statistical reporting of security incidents to the Policy Health and Safety Committee.

Human Resources Branch

Employee Assistance Program will:

66. Promote well-being at the CBSA;
67. Provide a confidential and free service that is accessible to all CBSA employees and their families;
68. Ensure that all employees are aware of the EAP and CISM services and how to access them; and
69. Provide EAP and CISM services as per the EAP Guidelines and CISM Guidelines and Standard Operating Procedures.

CBSA ASFC

Informal Conflict Management System (ICMS) will:

- 70. Ensure ICMS services are available to all CBSA employees; and
- 71. Promote the ICMS, provide information and increase awareness of the ICMS program.

Occupational Health and Safety Division, Labour Relations and Compensation Directorate (LRCD) will:

- 72. Monitor compliance with this policy;
- 73. Ensure this policy remains current by reviewing it at least once every three years and updating it as changes are required;
- 74. Provide advice, guidance and interpretation of the *Violence Prevention in the Work Place Regulation* to employees, management, and the Regional OHS Advisors at the CBSA;
- 75. Develop, in consultation with key stakeholders, Violence Prevention in the Work Place awareness training for all employees; and
- 76. Review the Violence Prevention in the Work Place awareness training at least once every three years or as new information becomes available or if there is a change in the work place.

Regional Occupational Health and Safety Advisors will:

- 77. Provide advice, guidance and interpretation of the Violence Prevention in the Work Place Regulation to employees and management within their respective region; and
- 78. Ensure that the Occupational Health and Safety Division, LRCD is advised of any significant incidents.

References

- o HRSDC-Labour Program – Guide to Violence Prevention in the Work Place
- o Canada Centre for Occupational Health and Safety
- o Comptrollership Manual – Security Volume – Chapter 15
- o Comptrollership Manual – Security Volume – Chapter 26
- o Comptrollership Manual – Security Volume – Chapter 27
- o CBSA Employee Assistance Program (EAP) Guidelines
- o CBSA CISM Guidelines and Standard Operating Procedures
- o CBSA ICMS Policy & Program Framework
- o CBSA Code of Conduct
- o NJC Occupational Health and Safety Directive
- o TBS Policy on Prevention and Resolution of Harassment in the Workplace

Inquiries

Questions concerning this policy should be directed to CBSA's Occupational Health and Safety Division at the following mailbox: CBSA/ASFC, OHS-SST.

Appendix A

Identification of Factors that Contribute to Work Place Violence

The *Violence Prevention in the Work Place Regulation* requires the CBSA to identify all factors that contribute to work place violence. Being proactive in identifying factors allows for their assessment and control prior to the factors actually generating violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with identifying factors that contribute to work place violence.

To understand and control work place violence, we must consider all of the possible sources of violent behaviour. Work place violence can arise from:

- A person inside the work place, such as a co-worker, a manager, or an employee;
- A person related to the function of the work place, such as a traveller, client or contractor;
- A person with an indirect relationship with the work place, such as an estranged spouse or partner, or a former employee; and
- A person who is unrelated to the organization, such as a person with criminal intent.

In an effort to determine which CBSA activities may increase the risk for work place violence, a review of industry research was undertaken as well as a review of CBSA's Security Incident Reports for a period of 2004-2008 and Hazardous Occurrence Investigation Reports (HOIRs) for the period of 2007-2008. These reports are submitted by employees and supervisors. This list is not meant to be exhaustive in nature, but is intended to highlight factors specific to the CBSA.

- Working with the public
- Carrying out inspection and enforcement duties
- Working with unstable or volatile persons
- Working in small numbers
- Working in isolated or low traffic areas
- Working in high traffic areas
- Working in a 24/7 operation
- Meeting clients in their homes, in the community, or at their place of business
- Handling money, valuables
- Driving a vehicle as a job requirement
- Working with crisis and emergency situations
- Interacting with private sector employees in the following locations:
 - Sufferance/queens/bonded warehouses
 - Container examination facilities
 - Marine ports
 - Other facilities where CBSA maintains a presence
- Geographical location of our work places

Appendix B

Assessment of Factors that Contribute to Work Place Violence

The *Violence Prevention in the Work Place Regulation* requires the CBSA to assess the potential for work place violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with assessing factors that contribute to work place violence.

Given that employees of the CBSA, especially those in an enforcement role, perform their duties in situations coinciding with the specific factors referenced in the previous Appendix, it is recognized by management and employees that the potential for violence exists on a daily basis and is considered a normal condition of employment for those in an enforcement role. The nature of our work activities includes the enforcement of over 90 Acts and Regulations at approximately 1200 service points in Canada. We also have employees stationed at various Missions around the world. It is foreseeable that some of our clients are not going to be content with the direction our employees must provide.

Certain work factors, processes, and interactions can put people at increased risk from work place violence. By nature of their work, CBSA employees may be exposed to situations involving abuse, threats or intimidation. These are all factors that increase the risk for work place violence.

As an organization, the CBSA has recognized this and put preventative measures in place to protect our employees. More details on these measures are found in Appendix D.

The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors. Information about threat and risk assessments and the process for requesting one may be found at Appendix C. If the threat and risk assessment demonstrates the existence of a violence factor that must be controlled, management will address this factor with the participation of the work place health and safety committee who will assist in the assessment of the hazard and recommend appropriate controls.

Appendix C

Physical Threat and Risk Assessments

Should an unforeseen work place violence hazard be identified, it must be promptly assessed in order to protect against it. The assessment will take place in the form of a Physical Threat and Risk Assessment.

Physical Threat and Risk Assessments (TRA) are used to identify the existence of residual risk and to provide a basis for how to mitigate that risk with physical security safeguards.

The physical TRA utilizes the standard approach for TRA's (RCMP / CSE Harmonized TRA methodology), with particular attention being paid to individuals who may commit violence (threat agent), personnel including clients (assets being protected), and conditions that could allow for events to escalate and persist (vulnerabilities).

The TRA can be conducted to assess whether or not an immediate response to a situation is warranted and, if so, the best course of action in terms of containing, minimizing and returning to normal operations following an incident. It will generally involve the Manager and, depending upon the specific case, HR (OHS, EAP) and Security specialists who can speak to the controls in place within the environment. It must be noted that information may be solicited from other groups. The goal of this exercise is to determine the most appropriate course of action--ranging from no action being required through to intervention by police.

Process for requesting a Physical Threat and Risk Assessment:

For assistance with Physical Threat and Risk Assessments, management should contact their regional security manager. Depending on the complexity of the situation, the regional security manager may forward a request for assistance to the Security and Professional Standards Directorate at Headquarters.

CBSA ASFC

Appendix D

Controls to Eliminate or Minimize Work Place Violence

After the risk factors have been assessed, necessary controls must be developed and implemented. As required by the *Canada Labour Code*, the CBSA will control risk factors for violence in accordance with the hierarchy of controls, which are elimination, reduction, and personal protective equipment. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will recommend controls to management to address work place violence risk factors.

A control or preventive measure must not create a new hazard. For example, if a locked security door to prevent unauthorized access is installed, it must meet the applicable fire protection requirements in case of an emergency.

When addressing controls for work place violence, it is necessary to consider human behaviour as a factor. While we can often predict a response to a certain situation, human behaviour can be spontaneous or unpredictable, making it difficult to truly eliminate risk. Along with the physical security notions implemented by the CBSA, supervisors must be cognizant in recognizing employee behaviour that could lead to a violent act. Managers are encouraged to support their employees by letting them know that there is an EAP available to them and their families and encourage them to go for support (but cannot insist that they go as EAP is voluntary). Furthermore, EAP provides advisory services for managers and union representatives to discuss how to initiate this kind of conversation with the employee.

The CBSA has taken many steps to minimize the probability of violence occurring in our work places. The following are the current controls in place at the CBSA:

Eliminate/Minimize Violence

- Threat/Risk Assessments
- Restricted Access
- Controlled Access/Card Access
- Facility Design
- Security Guards / Security Zones
- Key pad locks
- Design considerations - ditches/bollards
- Portable personal alarms
- Communication equipment
 - Radios
 - Telephones/Satellite telephones
 - Computers
- Alarms in Hearing Rooms
- Signage
- Training (see Appendix G)
- Policies/Procedures (i.e. Policy on the Use of Force, Enforcement Manual, etc.)
- Emergency Plans
- Referrals to EAP
- Security screening for employees and contractors

Protective and Defensive Equipment

- Protective vest
- Baton
- OC Spray
- Handcuffs

CBSA ASFC

- Duty Firearm

Appendix E

Response to Violence – Emergency Procedures

Response to situations of violence will be in accordance with the Building Emergency Plan for each facility.

As required by security policy, employees will be trained on the emergency procedures to follow for their facility. Step-by-step instructions are required to be posted at a readily accessible location in the work place detailing emergency notification procedures.

Management's decision of whether or not to notify the police must take into consideration the nature of the violence and the concerns of the employee(s) who has (have) reported the incident of violence. This decision must be made in consultation with the affected employee(s).

Where an investigation is conducted by the police, notifying the work place health and safety committee/representative will depend on whether the police prohibit such notification by law. The identity of persons involved will not be disclosed without their consent.

Management will assess the need for a de-briefing of the situation with the employees involved and with members of the work place health and safety committee, as designated by the Co-chairs. Management will also provide employees who are involved in a situation of work place violence with assistance required, including referrals to EAP/CISM.

Appendix F

Notification and Investigation

Employees are required to promptly report potentially violent situations and occurrences of work place violence to their supervisor without delay. Should the work place violence be between the employee and his/her supervisor, the employee will report the occurrence to the immediate supervisor of the supervisor involved. Investigations are conducted in accordance with existing security policies.

Incidents (i.e. abuse, threats, stalking, assaults, demonstrations, etc) must be reported as stipulated in the Security Volume, Chapter 15 - Reporting of Security Incidents.

The Regional Security Officer or the Security and Professional Standards Directorate (SPSD) will provide advice, action and/or investigation. Depending on the incident, the SPSPD will conduct, or cause to be conducted, an investigation that is objective and completed by a qualified competent person.

The *Violence Prevention in the Work Place Regulation* requires management to respond to reports of work place violence or alleged work place violence and attempt to resolve the matter with the employee as soon as possible. If the matter is unresolved, the manager must appoint a competent person to investigate the work place violence [see Exception below]. The competent person will investigate and provide a written report to the manager with conclusions and recommendations.

Chapters 15 and 27 of the Security Volume allow for the qualified "competent" person(s) investigating to make recommendations to management concerning appropriate corrective measures to prevent a reoccurrence as much as possible. Management is responsible for ensuring corrective measures are applied.

Exception:

A formal investigation by a competent person is not required if:

- (a) the work place violence was caused by a person other than an employee;
- (b) it is reasonable to consider that engaging in the violent situation is a normal condition of employment; and
- (c) the employer has effective procedures and controls in place, involving employees to address work place violence.

However, the obligation remains for management to attempt to resolve the matter with the employee as soon as possible.

Reports

In addition to the Security Incident Report, the following reports may be required to be completed, depending on the circumstances:

- Use of Force Report (BSF 586) – required when an officer uses force or when an officer implies with defensive equipment that force will be used.
- CBSA Hazardous Occurrence Investigation Report (LAB 1070) – required when there is an incident, a minor or disabling injury, or when emergency procedures are initiated.

Appendix G

Training of Employees

Basic violence prevention in the work place awareness training will be provided to all CBSA employees. In addition to this, employees who work in an enforcement role attend Control and Defensive Tactics training and, when required for their work, the Duty Firearm Course.

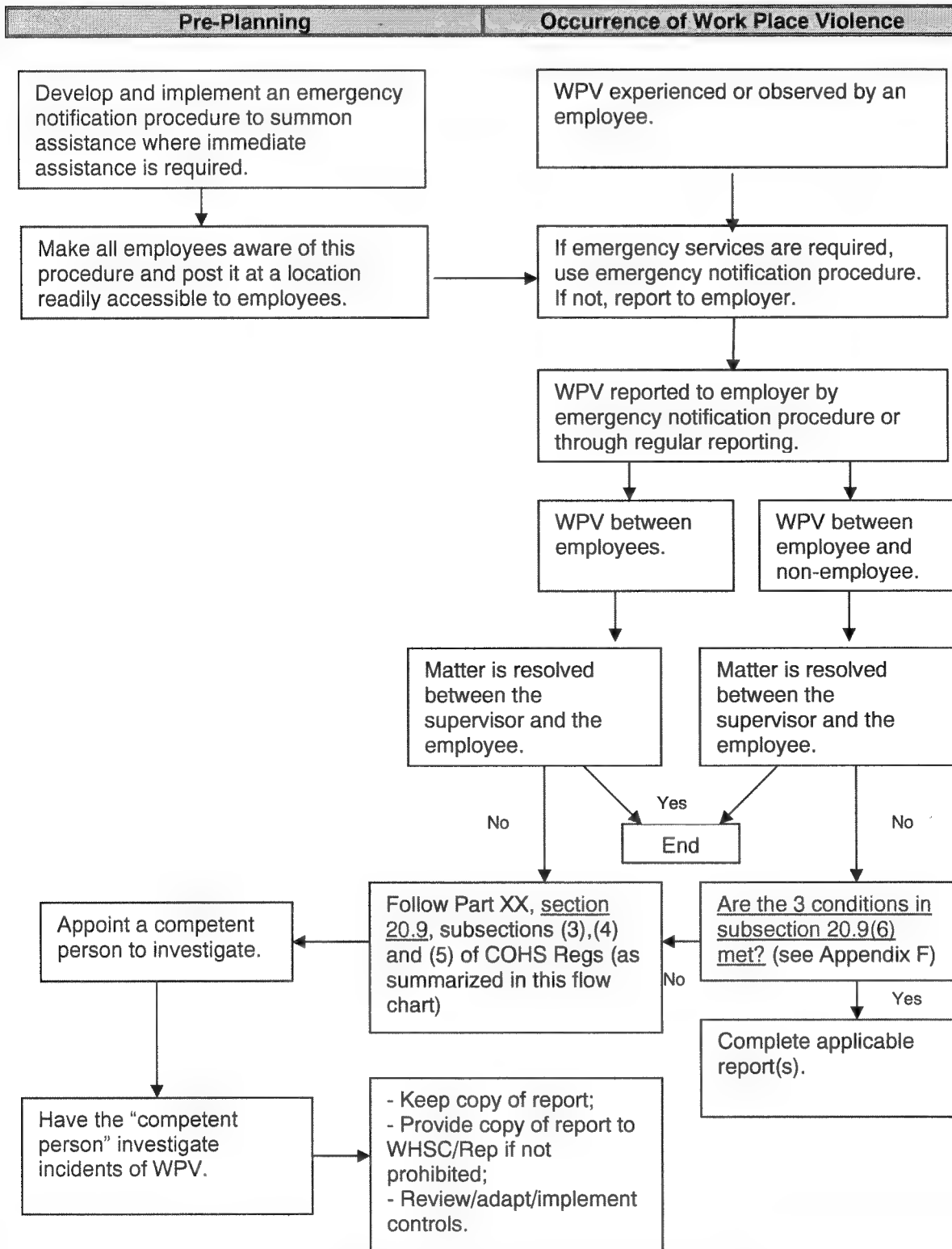
Violence prevention in the work place awareness training will be reviewed once every three years or sooner if there is a change in respect of the risk of work place violence or when new information on the risk of work place violence becomes available.

The following is a list of training related to work place violence currently available at CBSA:

- Violence Prevention in the Work Place
- Control and Defensive Tactics
- Duty Firearms Course
- Security Awareness Training
- Employee Assistance Program Information Sessions
- Coping with Stress
- Managing Psychological Health: A Salient Management Challenge in the Early 21st Century
- Moving to an Armed Workforce: Workshop for Managers
- Critical Incident Stress Management Awareness Sessions for Managers
- Informal Conflict Management System (ICMS) Workshops
 - Generations
 - Power of Words
 - ICMS @ Work
 - Difficult Conversations

Appendix H

Flow Chart – Pre-Planning for and Investigation into Work Place Violence (WPV)





Appendix I

Sample Emergency Notification Procedures

Employees need to be made aware of the emergency notification procedures applicable to them and a text of those procedures are required to be posted in a location readily accessible to employees. In most cases, this information will be taken directly from the Building Emergency Plan.

The following is a sample of emergency notification procedures that may be used:

IN THE EVENT YOU EXPERIENCE OR OBSERVE A WORK PLACE VIOLENCE OCCURRENCE

- Protect yourself and/or co-workers from injury
- If an emergency exists, call 911
- Notify your supervisor
- Follow the Policy for Reporting Security Incidents

The following contact information could also be included:

- Municipal emergency services (police, fire, ambulance)
- Management contact information
- Regional security contacts
- Regional Emergency Operations Centre
- Work Place Health and Safety Committee members
- Other tenants of the building
- Tenant and property managers
- Bridge/Tunnel/Airport Authorities
- US Customs and Border Patrol

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 10:13 AM
To: Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations
Subject: RE: VP Ops feedback: CAT 3 media query sexual assault allegations (VICE)

Please note both A/VP Comptrollership and VP HR have approved. Unless you have any urgent changes, I will proceed with response as is. Thanks. Esme

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 15, 2016 10:04 AM
To: Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations
Subject: VP Ops feedback: CAT 3 media query sexual assault allegations (VICE)
Importance: High

Hi Marc and Ken,

Please see VP Ops feedback.

Marc: Is there any additional training messaging you'd like to add?

Ken: For Q5, the ATIP mentions the individual accused was a recruit and that the person who made the allegation was a recruit. Let me know if you want the word recruit removed.

Seeking feedback as soon as possible.

Thanks,
Esme

Esme Bailey
613-948-4013

From: Xavier, Caroline
Sent: August 15, 2016 9:48 AM
To: Bailey, Esme; Piché, Jean-Stéphen; Walker, Christine (HQ)
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; Thibodeau, MarcR (HRB-HQ); Proulx, Dan; McCarthy, Ken; MacVicar, Roslyn
Subject: RE: For VP approval: CAT 3 media query sexual assault allegations (VICE)
Importance: High

Approved however a couple of comments.

Did we want to say anything about training...as training is promoted for mgrs/employees in this space and at some point was mandated for all employees or managers (I just

cannot recall the details). HRB or Security may be able to confirm. I think it helps speak to the preventative nature of managing the issue.

Also, in Q5 we speak to a recruit – is that already part of the public domain or should we stick to individual or something as we did with the others? I only mention it because it is the only one that is less generic.

Thanks,

Caroline Xavier

Vice-President | Vice-Présidente
Operations Branch | Direction générale des opérations
Canada Border Services Agency | Agence des services frontaliers du Canada
18th Floor, 191 Laurier Ave. West | 18ième étage, 191 avenue Laurier ouest
613-952-5269 | facsimile / télécopieur 613-948-7130
Caroline.xavier@cbsa-asfc.gc.ca

From: Bailey, Esme

Sent: August 15, 2016 9:05 AM

To: Piché, Jean-Stéphane; Cloutier, Jacques; Xavier, Caroline; Walker, Christine (HQ)

Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; Thibodeau, MarcR (HRB-HQ); Proulx, Dan; McCarthy, Ken

Subject: For VP approval: CAT 3 media query sexual assault allegations (VICE)

Hello. For VP approval. Response is approved by A/DG Security and Professional Standards and A/DG Comms. DG LR approved Q2. ATIP was consulted. Seeking approval by 10:15 a.m. Thanks. Esme

Time of call: August 10, 11:48 a.m.

Deadline: August 12, 17:00 ET (Reporter has been advised deadline will not be met)

Media: VICE

Contact:

Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 11:27 AM
To: Gosselin, Gail
Cc: Mackenzie, Joey
Subject: RE: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Gail,

We have connected with the reporter about timelines and advised we will get back to as soon as we can.

Thanks,
Esme

Esme Bailey
613-948-4013

From: Gosselin, Gail
Sent: August 15, 2016 10:53 AM
To: Bailey, Esme
Cc: Mackenzie, Joey
Subject: Re: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Pls be advised DM is currently in Mtl attending event with MO. Review and approval will not occur before your noon time line so pls take measures to manage expectations of the media. Thks.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Bailey, Esme
Sent: Monday, August 15, 2016 10:20 AM
To: Gosselin, Gail; Lizotte-MacPherson, Linda
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cloutier, Jacques; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Piché, Jean-Stéphane; Saindon, Hubert; Xavier, Caroline; Walker, Christine (HQ); Braham, Stephen; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken; Proulx, Dan
Subject: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hello. For PO approval. Response is approved by VP Ops, A/VP Comptrollership and VP HR. Seeking approval by 11:30 a.m. Reporter was advised Friday morning her deadline would not be met. Seeking to provide response before noon today. Thanks. Esme

Time of call: August 10, 11:48 a.m.
Deadline: August 12, 17:00 ET (Reporter has been advised deadline will not be met)
Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
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 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
 - Directive on the Harassment Complaint Process <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26040>
 - Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hig-eng.asp>
 - Preventing and Resolving Harassment in the Workplace – A Guide for Managers <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hars-eng.asp>
 - Is it Harassment? A tool to Guide Employees <http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/mibh-sjh-eng.asp>
 - Collective Agreements https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/coll_agre/siglist-eng.asp
 - Policy on Violence prevention in the workplace (document attached)
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 01:02 PM
To: Gosselin, Gail
Cc: Mackenzie, Joey; CBSA-ASFC-Media Relations
Subject: RE: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Gail,

To confirm, please find revised Q2 for review. I have listed the first three links and have removed the others.

Thanks,
Esme

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
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- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Esme Bailey
613-948-4013

From: Gosselin, Gail
Sent: August 15, 2016 12:59 PM
To: Bailey, Esme
Cc: Mackenzie, Joey
Subject: FW: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Esme,

DM ok with response but would like to limit the policy links to the first three. Thank you.

From: Bailey, Esme
Sent: August 15, 2016 10:20 AM
To: Gosselin, Gail; Lizotte-MacPherson, Linda
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cloutier, Jacques; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Piché, Jean-Stéphane; Saindon, Hubert; Xavier, Caroline; Walker, Christine (HQ); Braham, Stephen; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken; Proulx, Dan
Subject: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hello. For PO approval. Response is approved by VP Ops, A/VP Comptrollership and VP HR. Seeking approval by 11:30 a.m. Reporter was advised Friday morning her deadline would not be met. Seeking to provide response before noon today. Thanks. Esme

Time of call: August 10, 11:48 a.m.
Deadline: August 12, 17:00 ET (Reporter has been advised deadline will not be met)
Media: I VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

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 - Policy on Violence prevention in the workplace (document attached)
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Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
Senior Media Spokesperson, Corporate Affairs Branch
Canada Border Services Agency / Government of Canada
esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés
Agence des services frontaliers du Canada / Gouvernement du Canada
esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 01:38 PM
To: Mackenzie, Joey
Subject: RE: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Joey,

I do not have a breakdown of the eight cases but can give you the breakdown for all 14 cases.

- Founded cases – 4
- Unfounded cases – 3 (The CBSA uses the term “unfounded” in cases where the evidence disproves an allegation, based on the balance of probability.)
- Inconclusive cases – 3 (The CBSA uses the term “inconclusive” in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.)
- Closed cases – 2 (With the individual’s resignation, the CBSA was not able to conclude the investigation.)
- Ongoing cases – 2

Thanks,
Esme

Esme Bailey
613-948-4013

From: Mackenzie, Joey
Sent: August 15, 2016 11:49 AM
To: Bailey, Esme
Subject: RE: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Esme,

For Q 4: For the four cases that are with the CBSA – were they founded, inconclusive etc.?

Thanks!

Joey

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

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From: Bailey, Esme
Sent: August 15, 2016 11:27 AM
To: Gosselin, Gail
Cc: Mackenzie, Joey
Subject: RE: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hi Gail,

We have connected with the reporter about timelines and advised we will get back to as soon as we can.

Thanks,
Esme

Esme Bailey
613-948-4013

From: Gosselin, Gail
Sent: August 15, 2016 10:53 AM
To: Bailey, Esme
Cc: Mackenzie, Joey
Subject: Re: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Pls be advised DM is currently in Mtl attending event with MO. Review and approval will not occur before your noon time line so pls take measures to manage expectations of the media. Thks.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Bailey, Esme
Sent: Monday, August 15, 2016 10:20 AM
To: Gosselin, Gail; Lizotte-MacPherson, Linda
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cloutier, Jacques; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Piché, Jean-Stéphen; Saindon, Hubert; Xavier, Caroline; Walker, Christine (HQ); Braham, Stephen; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken; Proulx, Dan
Subject: For PO approval: CAT 3 media query sexual assault allegations (VICE)

Hello. For PO approval. Response is approved by VP Ops, A/VP Comptrollership and VP HR. Seeking approval by 11:30 a.m. Reporter was advised Friday morning her deadline would not be met. Seeking to provide response before noon today. Thanks. Esme

Time of call: August 10, 11:48 a.m.
Deadline: August 12, 17:00 ET (Reporter has been advised deadline will not be met)
Media: VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

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A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

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The complainant did not file a complaint with the police.

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Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
- Why was the complaint found to be inconclusive?**

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Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.

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Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
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Case #3:

- How many victims were there in this case?**
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There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

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Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 01:42 PM
To: Piché, Jean-Stéphien
Cc: Ibrahim, Nesreen; Graham, Jason; Thibodeau, MarcR (HRB-HQ); CBSA-ASFC-Media Relations
Subject: For VP CAB awareness: Revised response CAT 3 media query sexual assault allegations (VICE)
Attachments: A-2016-07579 (2).pdf

Hello. For VP CAB awareness. Revised response as approved by PO – response to Q1 has been shortened. Thanks.
Esme

Media: VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

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The allegation was founded.

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- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

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Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 01:44 PM
To: Holly Grenier (holly.grenier@canada.ca)
Cc: CBSA-ASFC-Media Relations; Media Relations / Relations avec les médias (PS/SP); 'ps.communicationsissuesmanagement-communicationsgestiondesenjeux.sp@canada.ca'
Subject: For PCO awareness: CBSA response sexual assault allegations (VICE)
Attachments: A-2016-07579 (2).pdf

Hello Holly. For PCO awareness. CBSA approved response. Thanks. Esme

Media: 'VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

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Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

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Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
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Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

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- How many victims were there in this case?
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There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey
Senior Media Spokesperson, Corporate Affairs Branch
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esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

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Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 01:50 PM
To:
Subject: Your follow up questions for the CBSA

Hello

Please find the Canada Border Services Agency (CBSA) response to your questions.

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Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
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The complainant did not file a complaint with the police.
The allegation was founded.

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- Were local police involved, or was it RCMP?

The police charged the male.

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Two officers were accused.

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- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

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Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
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There was one victim in this case.

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Best regards,
Esme

Esme Bailey

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From: [mailto: @vice.com]
Sent: August 10, 2016 11:48 AM
To: Gingras, Julie; Bailey, Esme; CBSA-ASFC_QUESTIONS
Subject: Media request and follow-up questions — deadline Friday at 5 p.m.

Hello Julie and Esme,

Thank you for your help with my previous requests.

I have some follow-up questions (below) for you and CBSA media relations regarding a recent access to information request (attached). I need the answers by this Friday end of day (5 p.m. ET). This is a hard deadline.

Please let me know if you have any questions. My cell is or you can reach me by email.

Thank you,

Questions for ATIP officers and/or CBSA media relations:

- 1) (For ATIP analysts) Are you 100 percent sure each allegation in the chart corresponds to the information in the other columns? The reason I'm asking is that in one case (7) there is only one victim but the gender is "females." And in another case (2) there are three accusers but the gender of the victim(s) is listed as "female." Is it possible the information got mixed up, or are these typos?
- 2) (For ATIP analysts) The request was for allegations dating back to 2003, but the earliest complaint is 2005. Were there no allegations between 2003 and 2005?
- 3) What is the SPSA? I'm assuming it stands for the internal investigation mechanism.
- 4) What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.
- 5) Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

6) Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

7) Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

The rest of my questions correspond to each case, which I've ordered chronologically:

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

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- Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #1:

- Why were police not involved if the officer resigned?
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Case #9:

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Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
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- Were local police involved, or was it RCMP?

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- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

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- How many officers were accused? Two?
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Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

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- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

If you have to prioritize any one question, I am most interested in knowing whether accused CBSA employees continued to work for the CBSA after the internal investigations concluded. This information is listed in two of the 13 cases, and therefore should be released for the other 11.

--

Staff Reporter, VICE News

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 02:53 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaikos, Panayiota; Lockwood, Dawn
Subject: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)
Attachments: A-2016-07579 (2).pdf

Hello Ken and Marc. The response was provided to VICE this afternoon and she has the following questions. I will follow up and confirm her deadline and advise. For Q1, I do not believe we can provide this information. For Q2, she is asking specifically about the 2 cases we did not address in her previous query. We will consult ATIP again once we have received your input. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: To confirm

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

Response provided Aug15

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Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

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-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

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-Did the officer continue to work with the CBSA after the internal investigation concluded?

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-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

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The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

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The complainant did not file a complaint with the police.
The allegation was founded.

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- Were local police involved, or was it RCMP?**

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Esme Bailey
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Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 02:54 PM
To:
Subject: RE: Your follow up questions for the CBSA

We have received your follow up questions and are working to address. Please let me know your deadline.

Best regards,
Esme

Esme Bailey
Senior Media Spokesperson, Corporate Affairs Branch
Canada Border Services Agency / Government of Canada
questions@cbsa-asfc.gc.ca / Tel: 613-957-6500/1-877-761-5945 / TTY : 866-335-3237

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From: [mailto: @vice.com]
Sent: August 15, 2016 2:11 PM
To: Bailey, Esme
Subject: Re: Your follow up questions for the CBSA

Also, to add to that: In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

On 15 August 2016 at 14:01, @vice.com> wrote:
One additional question for you based on Question 4 below:

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Thank you!

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On 15 August 2016 at 13:58, @vice.com> wrote:
Thank you very much, Esme. I may have additional questions for you. Appreciate this response.

On 15 August 2016 at 13:49, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

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 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?
- Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Best regards,
Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

questions@cbsa-asfc.gc.ca / Tel: [613-957-6500](tel:613-957-6500)/[1-877-761-5945](tel:1-877-761-5945) / TTY : [866-335-3237](tel:866-335-3237)

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From: [mailto: @vice.com]
Sent: August 10, 2016 11:48 AM
To: Gingras, Julie; Bailey, Esme; CBSA-ASFC_QUESTION
Subject: Media request and follow-up questions — deadline Friday at 5 p.m.

Hello Julie and Esme,

Thank you for your help with my previous requests.

I have some follow-up questions (below) for you and CBSA media relations regarding a recent access to information request (attached). I need the answers by this Friday end of day (5 p.m. ET). This is a hard deadline.

Please let me know if you have any questions. My cell is or you can reach me by email.

Thank you,

Questions for ATIP officers and/or CBSA media relations:

1) (For ATIP analysts) Are you 100 percent sure each allegation in the chart corresponds to the information in the other columns? The reason I'm asking is that in one case (7) there is only one victim but the gender is

"females." And in another case (2) there are three accusers but the gender of the victim(s) is listed as "female." Is it possible the information got mixed up, or are these typos?

2) (For ATIP analysts) The request was for allegations dating back to 2003, but the earliest complaint is 2005. Were there no allegations between 2003 and 2005?

3) What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

4) What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

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6) Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

7) Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

The rest of my questions correspond to each case, which I've ordered chronologically:

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

Case #7:

-Why were the allegations determined to be unfounded?

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

If you have to prioritize any one question, I am most interested in knowing whether accused CBSA employees continued to work for the CBSA after the internal investigations concluded. This information is listed in two of the 13 cases, and therefore should be released for the other 11.

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Staff Reporter, VICE News

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Staff Reporter, VICE News

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Staff Reporter, VICE News

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 03:28 PM
To:
Subject: RE: Your follow up questions for the CBSA

We are working to address but will not be able to respond today. We will get back to you as soon as we can.

Best regards,
Esme

From: [mailto: @vice.com]
Sent: August 15, 2016 3:20 PM
To: Bailey, Esme
Subject: Re: Your follow up questions for the CBSA

My deadline is in an hour.

On 15 August 2016 at 14:53, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

We have received your follow up questions and are working to address. Please let me know your deadline.

Best regards,

Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

questions@cbsa-asfc.gc.ca / Tel: [613-957-6500](tel:613-957-6500)/[1-877-761-5945](tel:1-877-761-5945) / TTY : [866-335-3237](tel:866-335-3237)

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From: [mailto: @vice.com]
Sent: August 15, 2016 2:11 PM
To: Bailey, Esme
Subject: Re: Your follow up questions for the CBSA

Also, to add to that: In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

On 15 August 2016 at 14:01, @vice.com> wrote:

One additional question for you based on Question 4 below:

Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)
Thank you!

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

On 15 August 2016 at 13:58, @vice.com> wrote:

Thank you very much, Esme. I may have additional questions for you. Appreciate this response.

On 15 August 2016 at 13:49, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

Please find the Canada Border Services Agency (CBSA) response to your questions.

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
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- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Best regards,
Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

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From: [mailto: @vice.com]
Sent: August 10, 2016 11:48 AM
To: Gingras, Julie; Bailey, Esme; CBSA-ASFC_QUESTIONS
Subject: Media request and follow-up questions — deadline Friday at 5 p.m.

Hello Julie and Esme,

Thank you for your help with my previous requests.

I have some follow-up questions (below) for you and CBSA media relations regarding a recent access to information request (attached). I need the answers by this Friday end of day (5 p.m. ET). This is a hard deadline.

Please let me know if you have any questions. My cell is or you can reach me by email.

Thank you,

Questions for ATIP officers and/or CBSA media relations:

1) (For ATIP analysts) Are you 100 percent sure each allegation in the chart corresponds to the information in the other columns? The reason I'm asking is that in one case (7) there is only one victim but the gender is "females." And in another case (2) there are three accusers but the gender of the victim(s) is listed as "female." Is it possible the information got mixed up, or are these typos?

2) (For ATIP analysts) The request was for allegations dating back to 2003, but the earliest complaint is 2005. Were there no allegations between 2003 and 2005?

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7) Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

The rest of my questions correspond to each case, which I've ordered chronologically:

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

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- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

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- Why were police not involved if the officer resigned?
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Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

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- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
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Case #7:

- Why were the allegations determined to be unfounded?

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- Which police service was involved? In which province? This information is listed for most other cases that involved police.
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Case #4:

- Was the officer the student's direct superior?
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- If there were three accusers, why was this complaint found to be inconclusive?
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- How many victims were there in this case?
- Were local police or RCMP involved?
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If you have to prioritize any one question, I am most interested in knowing whether accused CBSA employees continued to work for the CBSA after the internal investigations concluded. This information is listed in two of the 13 cases, and therefore should be released for the other 11.

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Staff Reporter, VICE News

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Staff Reporter, VICE News

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Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 03:29 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaikos, Panayiota; Lockwood, Dawn
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hello. She has advised her deadline is within the hour. I have told her we will not be able to respond today. Seeking approved response by 9:00 ET tomorrow. Thanks. Esme

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 15, 2016 2:53 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaikos, Panayiota; Lockwood, Dawn
Subject: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hello Ken and Marc. The response was provided to VICE this afternoon and she has the following questions. I will follow up and confirm her deadline and advise. For Q1, I do not believe we can provide this information. For Q2, she is asking specifically about the 2 cases we did not address in her previous query. We will consult ATIP again once we have received your input. Thanks. Esme

Time: 14:11 ET, Aug15
Deadline: To confirm
Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault
Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

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- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.

- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
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Cases #10,14 filed a complaint with police

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A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 15, 2016 03:36 PM
To: Piché, Jean-Stéphane; Cloutier, Jacques; Xavier, Caroline; Walker, Christine (HQ)
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Subject: Heads up: CAT 3 media follow up sexual assault allegations (VICE)
Attachments: A-2016-07579 (2).pdf

Hello. Heads up. We have received follow up questions from VICE. We are working with Security and Professional Standards and Labour Relations to address and will send for approval when ready. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: 16:15 ET, Aug15 (reporter has been advised we are unable to respond today and will get back to her as soon as we can)

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**
- Were local police involved, or was it RCMP?**

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?**

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
- Why was the complaint found to be inconclusive?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
Senior Media Spokesperson, Corporate Affairs Branch
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esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

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esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 16, 2016 11:39 AM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hello. For approval. Please see proposed responses based on your feedback. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: To confirm

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

In accordance with the *Privacy Act*, the CBSA is unable to provide this level information.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

We can tell you that these two investigations remain ongoing.

Esme Bailey
613-948-4013

From: McCarthy, Ken
Sent: August 16, 2016 7:29 AM
To: Thibodeau, MarcR (HRB-HQ); Bailey, Esme
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
Subject: Re: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

The 'on-going' status was in the ATIP.
We could say it again though.

Ken

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Thibodeau, MarcR (HRB-HQ)
Sent: Tuesday, August 16, 2016 7:21 AM
To: McCarthy, Ken; Bailey, Esme
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Ken, Esme:
Could we say that the investigation is on-going?

From: McCarthy, Ken
Sent: August 15, 2016 4:26 PM
To: Bailey, Esme; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Esme

Q1. Still with CBSA

Case #'s 2, 4, 5, and 8. If we disclose this, I think we are getting dangerously close to having the individuals' identities revealed (either internally in CBSA, or publicly).

Q2. The remaining 2 of 14 cases

Both employees are currently suspended. Same argument as above. We should not disclose.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division, Comptrollership Branch
Canada Border Services Agency / Government of Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tel : 343-291-7686 / TTY : 1-866-335-3237

Directeur, Division de la sécurité du personnel et des normes professionnelles, Direction générale du contrôle
Agence des services frontaliers du Canada / Gouvernement du Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tél : 343-291-7686 / ATS : 1-866-335-3237

From: Bailey, Esme
Sent: August 15, 2016 2:53 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
Subject: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hello Ken and Marc. The response was provided to VICE this afternoon and she has the following questions. I will follow up and confirm her deadline and advise. For Q1, I do not believe we can provide this information. For Q2, she is asking specifically about the 2 cases we did not address in her previous query. We will consult ATIP again once we have received your input. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: To confirm

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

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Response provided Aug15

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Questions about specific cases:

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-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

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-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

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-Why weren't police involved if the officer resigned?

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-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

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-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

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-Why were the allegations determined to be unfounded?

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-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

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Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

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There was one victim in this case.

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Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

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Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 16, 2016 02:05 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn; Chahal, Sandra
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hi Marc,

Are you also okay with the proposed responses?

Thanks,
Esme

Esme Bailey
613-948-4013

From: McCarthy, Ken
Sent: August 16, 2016 12:44 PM
To: Bailey, Esme; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn; Chahal, Sandra
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Look good from my perspective.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division
Comptrollership Branch
Canada Border Services Agency / Government of Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tel : 343-291-7686 / TTY : 1-866-335-3237

Directeur, Division de la sécurité du personnel et des normes professionnelles
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To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn
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Time: 14:11 ET, Aug15
Deadline: To confirm

Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault
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Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaikos, Panayiota; Lockwood, Dawn
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Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaikos, Panayiota; Lockwood, Dawn
Subject: RE: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Esme

Q1. Still with CBSA

Case #'s 2, 4, 5, and 8. If we disclose this, I think we are getting dangerously close to having the individuals' identities revealed (either internally in CBSA, or publicly).

Q2. The remaining 2 of 14 cases

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Kenneth McCarthy

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To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)

Cc: Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Léveillé, Mélanie; CBSA-ASFC-Media Relations; Karaiskos, Panayiota; Lockwood, Dawn

Subject: For input and approval : CAT 3 media follow up sexual assault allegations (VICE)

Hello Ken and Marc. The response was provided to VICE this afternoon and she has the following questions. I will follow up and confirm her deadline and advise. For Q1, I do not believe we can provide this information. For Q2, she is asking specifically about the 2 cases we did not address in her previous query. We will consult ATIP again once we have received your input. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: To confirm

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
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- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.

- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
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Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

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Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

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Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local of RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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With the individual's resignation, we were not able to conclude the investigation.

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-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

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Two officers were accused.

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-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

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-How many victims were there in this case?

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There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 16, 2016 03:25 PM
To: Proulx, Dan; Lortie, Robin
Cc: CBSA-ASFC-Media Relations; Mundie, Robert; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle
Subject: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP
Attachments: A-2016-07579 (2).pdf

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We can tell you that these two investigations remain ongoing.

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Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

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- Why were police not involved if the complaint was founded?
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The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?
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The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?

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Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**
- Were local police involved, or was it RCMP?**

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?**

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Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
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- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.

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Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
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esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 16, 2016 04:08 PM
To: Mundie, Robert; Proulx, Dan; Lortie, Robin
Cc: CBSA-ASFC-Media Relations; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle
Subject: RE: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP

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Security and Professional Standards cited concerns that the people would be identifiable if we release indicate which case numbers involve officers still with the CBSA. If we say we are not in a position to provide any more detail on these cases, the reporter will ask why. Our response should include the reason we are unable to provide this information.

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Bailey, Esme

From: Bailey, Esme
Sent: August 16, 2016 04:22 PM
To: Giolti, Patrizia
Subject: RE: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP

Yes, I thought privacy too but Dan said not to cite it and Robert provided proposed response:

The CBSA is not in a position to provide any more detail on these cases without risk of revealing the identity of those who were accused.

Esme Bailey
613-948-4013

From: Giolti, Patrizia
Sent: August 16, 2016 4:19 PM
To: Bailey, Esme
Subject: Re: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP

So then there is a privacy issue...

Can Dan confirm either way? If no privacy then...?

From: CBSA-ASFC-Media Relations
Sent: Tuesday, August 16, 2016 4:14 PM
To: Giolti, Patrizia; Bailey, Esme; Cyr-Delfino, Denise; Guibert-Wolff, Line; Johnston, Marsha; Dorion, Nicholas
Subject: FW: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP

From: Mundie, Robert
Sent: August-16-16 04:14:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: Bailey, Esme; Proulx, Dan; Lortie, Robin
Cc: CBSA-ASFC-Media Relations; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle
Subject: RE: For ATIP review: Proposed response to CAT 3 VICE media follow up sexual assault allegation ATIP

Then you can add "without risk of revealing the identity of those accused"

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Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
The allegation was founded.

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- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
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- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**
- Were local police involved, or was it RCMP?**

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?**

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

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- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

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- Was the officer the student's direct superior?**
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esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 10:23 AM
To: McCarthy, Ken; Proulx, Dan; Thibodeau, MarcR (HRB-HQ)
Cc: CBSA-ASFC-Media Relations; Mundie, Robert; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle; Lortie, Robin; Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Karaiskos, Panayiota; Lockwood, Dawn; Chahal, Sandra
Subject: For awareness: Revised response to CAT 3 VICE media follow up sexual assault allegation ATIP

Hello,

Per our discussion this morning, please find the revised response to Q1. I have explained that it is one chart over two pages. I will move forward with approvals unless there are any concerns.

Thanks,
Esme

Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault
Questions:

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Response provided Aug15

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The allegation was founded.

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Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 10:40 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: Pat for approval: CAT 3 VICE media follow up sexual assault allegation ATIP
Attachments: A-2016-07579 (2).pdf

Hello Pat. For approval. I had a call with Dan (ATIP) and Ken (Security and Professional Standards) and Ken agreed to listing the case numbers. Also the chart is a spreadsheet and was broken up over two pages in the release but if it had been sent as one page, the info would have been all in one row. ATIP removed information such as police department as this would have narrowed down location. The only provinces identified are BC and Quebec and they are both large provinces with multiple CBSA locations. Once this response is VP approved, we will send it and Nicholas' query back to PO for approval at the same time. Thanks. Esme

Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault
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Response provided Aug15

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Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 11:00 AM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Walker, Christine (HQ); Xavier, Caroline
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; McCarthy, Ken; Thibodeau, MarcR (HRB-HQ); Mundie, Robert; Proulx, Dan
Subject: For VP approval CAT 3 VICE media follow up sexual assault allegation ATIP
Attachments: A-2016-07579 (2).pdf

Hello. For VP approval. Response has been approved by A/DG Security and Professional Standards, DG Labour Relations and A/DG Comms. ATIP was consulted. Seeking VP approval by noon. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: Aug15, reporter was advised deadline would not be met, seeking response this afternoon. She is publishing her story today.

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

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The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
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The complainants did not file a complaint with the police.

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There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch
Canada Border Services Agency / Government of Canada
esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés
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esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 01:09 PM
To: McCarthy, Ken
Cc: Braham, Stephen; Karaikos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

Importance: High

Hello Ken,

The reporter has come back with new questions. Would you be able to confirm the number of officers and if any were accused in more than case. I have proposed response below. Seeking approvals as soon as you can get back to me. Reporter is filing her story today.

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Thanks,
Esme

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613-948-4013

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Sent: August 17, 2016 10:23 AM
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Cc: CBSA-ASFC-Media Relations; Mundie, Robert; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle; Lortie, Robin; Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Karaikos, Panayiota; Lockwood, Dawn; Chahal, Sandra
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Contact: @vice.com,
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Response provided Aug15

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-Why were police not involved if the complaint was founded?

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The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

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-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

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The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

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-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

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-Why were the allegations determined to be unfounded?

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-How many officers were accused? Two?

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-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

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Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 03:17 PM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Walker, Christine (HQ); Xavier, Caroline
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; McCarthy, Ken; Thibodeau, MarcR (HRB-HQ); Mundie, Robert; Proulx, Dan
Subject: RE: For VP approval CAT 3 VICE media follow up sexual assault allegation ATIP

For awareness. The reporter has submitted some new questions. We are working to address and will resubmit for approval when ready. Her deadline remains COB today. Thanks. Esme

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 17, 2016 11:00 AM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Walker, Christine (HQ); Xavier, Caroline
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; McCarthy, Ken; Thibodeau, MarcR (HRB-HQ); Mundie, Robert; Proulx, Dan
Subject: For VP approval CAT 3 VICE media follow up sexual assault allegation ATIP

Hello. For VP approval. Response has been approved by A/DG Security and Professional Standards, DG Labour Relations and A/DG Comms. ATIP was consulted. Seeking VP approval by noon. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: Aug15, reporter was advised deadline would not be met, seeking response this afternoon. She is publishing her story today.

Media: VICE
Contact: @vice.com,
Issue: Allegations of sexual assault
Questions:

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Sent: August 17, 2016 04:12 PM
To: McCarthy, Ken
Cc: Braham, Stephen; Karaiskos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: RE: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

Is this okay as the response?

Response: One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Esme Bailey
613-948-4013

From: McCarthy, Ken
Sent: August 17, 2016 4:08 PM
To: Bailey, Esme
Cc: Braham, Stephen; Karaiskos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: RE: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

Esme:

The answer is partially in the ATIP release. The summary column for each case already identified the number of people involved:

- Case #s 1, 2, 3, 4, 8, 9, 10, 12, 14 – one BSO (each case)
- Case # 5 – two BSOs
- Case #6 – one CBSA employee
- Case #7 one manager
- Case #s 11, 13 – one recruit (each case)

Total number of accused in the 14 case – 15 employees (11 officers, one (non-officer) employee, one manager, two recruits)

None of the individuals were accused in more than one case.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division, Comptrollership Branch
Canada Border Services Agency / Government of Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tel : 343-291-7686 / TTY : 1-866-335-3237

Directeur, Division de la sécurité du personnel et des normes professionnelles, Direction générale du contrôle
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The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey
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Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 04:13 PM
To: Giolti, Patrizia
Subject: FW: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

If Ken approves, are you okay with me moving it to VPs?

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 17, 2016 4:12 PM
To: McCarthy, Ken
Cc: Braham, Stephen; Karaikos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: RE: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

Is this okay as the response?

Response: One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Esme Bailey
613-948-4013

From: McCarthy, Ken
Sent: August 17, 2016 4:08 PM
To: Bailey, Esme
Cc: Braham, Stephen; Karaikos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: RE: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP

Esme:

The answer is partially in the ATIP release. The summary column for each case already identified the number of people involved:

- Case #s 1, 2, 3, 4, 8, 9, 10, 12, 14 – one BSO (each case)
- Case # 5 – two BSOs
- Case #6 – one CBSA employee
- Case #7 one manager
- Case #s 11, 13 – one recruit (each case)

Total number of accused in the 14 case – 15 employees (11 officers, one (non-officer) employee, one manager, two recruits)

None of the individuals were accused in more than one case.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division, Comptrollership Branch
Canada Border Services Agency / Government of Canada
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Directeur, Division de la sécurité du personnel et des normes professionnelles, Direction générale du contrôle
Agence des services frontaliers du Canada / Gouvernement du Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tél : 343-291-7686 / ATS : 1-866-335-3237

From: Bailey, Esme
Sent: August 17, 2016 1:09 PM
To: McCarthy, Ken
Cc: Braham, Stephen; Karaiskos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: For urgent input: Follow up questions CAT 3 VICE media follow up sexual assault allegation ATIP
Importance: High

Hello Ken,

The reporter has come back with new questions. Would you be able to confirm the number of officers and if any were accused in more than case. I have proposed response below. Seeking approvals as soon as you can get back to me. Reporter is filing her story today.

New questions -The ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

Response: One case was not included in the ATIP release package. There are 14 separate cases that involved X officers.

Thanks,
Esme

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 17, 2016 10:23 AM
To: McCarthy, Ken; Proulx, Dan; Thibodeau, MarcR (HRB-HQ)
Cc: CBSA-ASFC-Media Relations; Mundie, Robert; Keeler, Carolyn; Legault, Anne; Dugas, Isabelle; Lortie, Robin; Jean-Paquette, Mélissa; Ibrahim, Nesreen; Graham, Jason; Braham, Stephen; Karaiskos, Panayiota; Lockwood, Dawn; Chahal, Sandra
Subject: For awareness: Revised response to CAT 3 VICE media follow up sexual assault allegation ATIP

Hello,

Per our discussion this morning, please find the revised response to Q1. I have explained that it is one chart over two pages. I will move forward with approvals unless there are any concerns.

Thanks,
Esme

Media: ' VICE
Contact: @vice.com, '

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

We can tell you that these two investigations remain ongoing.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 17, 2016 04:29 PM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Walker, Christine (HQ); Xavier, Caroline
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; McCarthy, Ken; Thibodeau, MarcR (HRB-HQ); Mundie, Robert; Proulx, Dan
Subject: For VP approval CAT 3 VICE media follow up sexual assault allegation ATIP
Attachments: A-2016-07579 (2).pdf

Hello. For VP approval. We have added most recent question (Q3). Response has been approved by A/DG Security and Professional Standards, DG Labour Relations and A/DG Comms. ATIP was consulted. Seeking VP approval by 17:30 ET. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: Aug15, reporter was advised deadline would not be met. Seeking response today and she is publishing her story today.

Media: VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.

- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
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Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?

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There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
Senior Media Spokesperson, Corporate Affairs Branch
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esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés
Agence des services frontaliers du Canada / Gouvernement du Canada
esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 18, 2016 02:24 PM
To: Piché, Jean-Stéphen
Cc: Graham, Jason; Ibrahim, Nesreen; CBSA-ASFC-Media Relations
Subject: For your approval: CAT 3 VICE media follow up sexual assault allegation ATIP
Attachments: A-2016-07579 (2).pdf

Hello. Following up for VP CAB approval. Response has been approved by A/AVP Ops and VP CAB. Thanks. Esme

Esme Bailey
613-948-4013

From: Bailey, Esme
Sent: August 17, 2016 4:29 PM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Walker, Christine (HQ); Xavier, Caroline
Cc: CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Saindon, Hubert; Braham, Stephen; McCarthy, Ken; Thibodeau, MarcR (HRB-HQ); Mundie, Robert; Proulx, Dan
Subject: For VP approval CAT 3 VICE media follow up sexual assault allegation ATIP

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Time: 14:11 ET, Aug15

Deadline: Aug15, reporter was advised deadline would not be met. Seeking response today and she is publishing her story today.

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

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Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

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-Why weren't police involved if the officer resigned?

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The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

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-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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The allegation was founded.

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-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
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Bailey, Esme

From: Bailey, Esme
Sent: August 19, 2016 12:59 PM
To: Dorion, Nicholas
Cc: Giolti, Patrizia; Guibert-Wolff, Line
Subject: VP approved: VICE query to go with your query back to PO

Hello Nicholas. Please send your journalism student query along with VICE response back to PO for approval. VICE response has been approved by A/AVP Ops, VP CAB/HR and VP Comptrollership. If you have any questions please let me know. Thanks. Esme

Time: 14:11 ET, Aug15

Deadline: Missed, reporter still wants response.

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>

- CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
- Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
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Bailey, Esme

From: Bailey, Esme
Sent: August 19, 2016 04:36 PM
To: Gosselin, Gail
Cc: CBSA-ASFC-Media Relations; Mackenzie, Joey
Subject: RE: PO for review and approval - Media Question - Cat 3 - VICE & University of King's College response - sexual assault allegations against CBSA employees -

Hi Gail,

Nicholas is working to address feedback related to the journalism student query.

For VICE, as the feedback related to response that was previously approved and sent to the reporter earlier this week, we have not made any changes. We will send the approved follow up response to VICE today.

Thanks,

Esme

From: Gosselin, Gail
Sent: August 19, 2016 3:23 PM
To: Dorion, Nicholas
Cc: Mackenzie, Joey
Subject: FW: PO for review and approval - Media Question - Cat 3 - VICE & University of King's College response - sexual assault allegations against CBSA employees -

Pls see changes incorporated below. For ease of reference you can pick up a hard copy from our office to indicate the changes.

No need to see updated version. Thks.

From: Dorion, Nicholas <Nicholas.Dorion@cbsa-asfc.gc.ca>
Sent: Friday, August 19, 2016 2:00 PM
To: Gosselin, Gail; Lizotte-MacPherson, Linda; Semaan, Nada
Cc: Blanchard, NathalieX; Saindon, Hubert; Ibrahim, Nesreen; Graham, Jason; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken; Reza, Arianne; CBSA-ASFC-Media Relations; Xavier, Caroline; MacVicar, Roslyn; Piché, Jean-Stéphen; Cloutier, Jacques; Bolduc, Martin; Walker, Christine (HQ)
Subject: PO for review and approval - Media Question - Cat 3 - VICE & University of King's College response - sexual assault allegations against CBSA employees -

Hi,

For PO approval please. VICE and University of King's College response to sexual assault allegations against CBSA employees.

Approved by VP CAB, A/DG Comms.

Q1, Q2 and Q6 approved by VP Comptrollership and VP HR.

Q3 lines have been approved by VP Programs and VP OPS.

Q4 and Q7 and approved by VP Comptrollership.

Thank you.
Nicholas Dorion

RESPONSE FOR VICE

Time: 14:11 ET, Aug15

Deadline: Missed, reporter still wants response.

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
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 - o Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
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 - o Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police. **I assume CBSA cannot file a police complaint -- only the individual. If so we should say this**
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the **individual**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

RESPONSE FOR University of King's College

Reporter:

Media: University of King's College

Email:

Deadline: August 18, 17:00 ET

Context: Journalist writing a story about 13 sexual assault complaints made against CBSA workers since 2003.

Q1: What is CBSA's procedure following a sexual assault complaint against an employee?

- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and acted upon accordingly.
- The Agency investigates all allegations of inappropriate behaviour and takes the necessary actions called for, from discipline up to and including termination.
- Border services officers are subject to the same laws as other Canadians.
- In the event that a criminal investigation is launched by the police force of jurisdiction, the CBSA cooperates fully with the police. The CBSA Professional Standards Investigation is parallel to the police force of jurisdictions' investigation.

Q2: What does CBSA do to prevent sexual assault from occurring?

- Awareness Training for CBSA officers and managers has been designed to nurture a culture that is founded on values and ethics of the Public Service of Canada and the CBSA, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.

- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions.
- All CBSA employees are subject to a very strict code of ethics and behaviour and any employee who violates these may face disciplinary action.

Q3: What is CBSA's policy for strip searching travelers? Who can make the call to issue a strip search and on what grounds? Do you have any information about the procedures of strip searching? (Guidelines and rules for CBSA workers)

- The Customs Act authorizes the CBSA to examine persons (s98).
- Personal searches must be substantiated by a superintendent who will decide whether the personal search will proceed based on the information presented by the border services officer.
- All personal searches are conducted as same-sex searches (male officers with male travellers and female officers with female travellers). For the safety of all parties, a second same-sex officer is present at all times as well.
- A pat down of outer clothing is considered part of routine processing and can be conducted by a person of either sex.
- The CBSA strongly recommends that officers of the same sex as the person concerned conduct pat downs, recognizing that in certain situations this will not always be possible.
- Further, CBSA policy does direct that, where it is operationally viable, a pat down will be conducted in the presence of another officer, for both officer and traveller safety and to safeguard against any unwarranted allegations of wrongdoing. **we need to be clear that pat down is with clothing. Eg oy asked to remove coat**

Q4: From the ATIP that was provided, there were 13 sexual assault complaints made against border employees since 2003. Out of the 13, 3 cases said that an employee was charged. I am wondering how many of these 13 cases have been resolved?

One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

- Founded cases – 4 (Case #12 was identified as closed in the ATIP release package – through further analysis, we concluded that it is founded.)
- Unfounded cases – 3 (The CBSA uses the term “unfounded” in cases where the evidence disproves an allegation, based on the balance of probability.)
- Inconclusive cases – 3 (The CBSA uses the term “inconclusive” in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.)
- Closed cases – 2 (With the individual's resignation, the CBSA was not able to conclude the investigation.)
- Ongoing cases – 2

Q6: If there are unresolved cases, are any officers involved in unresolved cases still employed with CBSA?

- We can tell you that two investigations remain ongoing.

Q7: Were all sexual assault investigative cases sent to the Security and Professional Standards Directorate?

- Yes. All of the 14 cases involved internal investigations. **Add this is an independent group**

Bailey, Esme

From: Bailey, Esme
Sent: August 19, 2016 04:39 PM
To:
Subject: RE: Your follow up questions for the CBSA

Apologies for the delay in getting back to you. Please find responses to your questions from Monday. We are still working on your other questions.

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Best regards,
 Esme

Esme Bailey
 Senior Media Spokesperson, Corporate Affairs Branch
 Canada Border Services Agency / Government of Canada
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From: [mailto: @vice.com]
Sent: August 15, 2016 2:11 PM
To: Bailey, Esme
Subject: Re: Your follow up questions for the CBSA

Also, to add to that: In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

On 15 August 2016 at 14:01,
 One additional question for you based on Question 4 below:

@vice.com> wrote:

Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.) Thank you!

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

On 15 August 2016 at 13:58, @vice.com> wrote:
Thank you very much, Esme. I may have additional questions for you. Appreciate this response.

On 15 August 2016 at 13:49, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

Please find the Canada Border Services Agency (CBSA) response to your questions.

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
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 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

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Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

There was one victim in this case.
The complaint was first brought to the CBSA.

Best regards,
Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

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From: [mailto: [@vice.com](mailto: @vice.com)]
Sent: August 10, 2016 11:48 AM
To: Gingras, Julie; Bailey, Esme; CBSA-ASFC_QUESTIONS
Subject: Media request and follow-up questions — deadline Friday at 5 p.m.

Hello Julie and Esme,

Thank you for your help with my previous requests.

I have some follow-up questions (below) for you and CBSA media relations regarding a recent access to information request (attached). I need the answers by this Friday end of day (5 p.m. ET). This is a hard deadline.

Please let me know if you have any questions. My cell is
me by email.

or you can reach

Thank you,

Questions for ATIP officers and/or CBSA media relations:

- 1) (For ATIP analysts) Are you 100 percent sure each allegation in the chart corresponds to the information in the other columns? The reason I'm asking is that in one case (7) there is only one victim but the gender is "females." And in another case (2) there are three accusers but the gender of the victim(s) is listed as "female." Is it possible the information got mixed up, or are these typos?
- 2) (For ATIP analysts) The request was for allegations dating back to 2003, but the earliest complaint is 2005. Were there no allegations between 2003 and 2005?
- 3) What is the SPSA? I'm assuming it stands for the internal investigation mechanism.
- 4) What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.
- 5) Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

6) Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

7) Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

The rest of my questions correspond to each case, which I've ordered chronologically:

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?
- Was the police response local BC police or the RCMP?

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

Case #7:

- Why were the allegations determined to be unfounded?

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

Case #5:

- How many officers were accused? Two?

-Were local BC police involved or RCMP?

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

If you have to prioritize any one question, I am most interested in knowing whether accused CBSA employees continued to work for the CBSA after the internal investigations concluded. This information is listed in two of the 13 cases, and therefore should be released for the other 11.

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Staff Reporter, VICE News

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Staff Reporter, VICE News

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Staff Reporter, VICE News

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Staff Reporter, VICE News

Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 10:17 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hello Pat. For approval. Responses have been approved by A/DG Security and Professional Standards and DG LR.
 Thanks. Esme

Time of call: Aug17, 17:54 ET

Deadline: Unreasonable, reporter was advised we'd respond as soon as we could

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

A1. While the CBSA will not speak to specifics of a particular case, we can say that whether or not a complaint is made to the CBSA, in cases where a CBSA employee is charged with a criminal offense, the CBSA will conduct an internal investigation.

Q2. In case #4 on the attached ATIP, the ATIP states that the complaint was determined to be founded. However, in your media response to me, you said the complaint was determined to be inconclusive. Which is it?

A2. Please note we incorrectly indicated the case was found to be inconclusive in our earlier response. In case #4 the CBSA conducted a full investigation and deemed the allegation to be unfounded.

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once made aware of the allegations, CBSA management will determine, pending the result of an investigation, if the employee may remain in the workplace, needs to be reassigned to less sensitive duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

Previous responses provided to the reporter

Response provided Aug19

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

- Why were police not involved if the complaint was founded?**
- Did the officer continue to work with the CBSA after the internal investigation concluded?**

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?**
- Was the police response local BC police or the RCMP?**

The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?**

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**
- Were local police involved, or was it RCMP?**

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?**

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
- Why was the complaint found to be inconclusive?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

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Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 10:29 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hi Pat,

For Q2, the original ATIP release listed the case as founded. In the media response it was listed as inconclusive. PSI has now determined upon review, it is unfounded.

For Q3, they are explaining our process once an allegation is made. Pending the results of the investigation, the person may remain in their position, may be moved to another position or may be suspended without pay.

Thanks,
 Esme

Thanks,

Esme Bailey
 613-948-4013

From: Giolti, Patrizia
Sent: August 22, 2016 10:25 AM
To: Bailey, Esme
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hi a few clarifying questions for you. Thanks...

From: Bailey, Esme
Sent: August 22, 2016 10:17 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hello Pat. For approval. Responses have been approved by A/DG Security and Professional Standards and DG LR. Thanks. Esme

Time of call: Aug17, 17:54 ET
Deadline: Unreasonable, reporter was advised we'd respond as soon as we could
Media: / VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

A1. While the CBSA will not speak to specifics of a particular case, we can say that whether or not a complaint is made to the CBSA, in cases where a CBSA employee is charged with a criminal offense, the CBSA will conduct an internal investigation.

Q2. In case #4 on the attached ATIP, the ATIP states that the complaint was determined to be founded. However, in your media response to me, you said the complaint was determined to be inconclusive. Which is it?

A2. Please note we incorrectly indicated the case was found to be inconclusive in our earlier response. In case #4 the CBSA conducted a full investigation and deemed the allegation to be **unfounded**. **a couple of issues here – the ATIP states 'founded' / we initially responded 'inconclusive' / now we are saying 'unfounded' ?

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once we are made aware of the allegations, CBSA management will determine, pending the result of an investigation * I believe the question is once allegations are made – what happens? Not following the result of an investigation

, if the employee may remain in the workplace, needs to be reassigned to less sensitive duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

Previous responses provided to the reporter

Response provided Aug19

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- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>

- CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
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The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

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-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

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-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

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With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

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The allegation was founded.

Case #9:

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- Why were the allegations determined to be unfounded?**

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- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
- Why was the complaint found to be inconclusive?**

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Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

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- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

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Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

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- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
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Porte-parole principale, Direction générale des services intégrés
Agence des services frontaliers du Canada / Gouvernement du Canada
esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 10:40 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Pat,

We are addressing the questions in Q3. When an allegation is made, what is done with the employee is determined before any investigation is complete. The person may stay in their job, be moved or suspended without pay pending the results of the CBSA investigation.

Thanks,
 Esme

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once made aware of the allegations, CBSA management will determine, pending the result of an investigation, if the employee may remain in the workplace, needs to be reassigned to less sensitive duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

Esme Bailey
 613-948-4013

From: Giolti, Patrizia
Sent: August 22, 2016 10:33 AM
To: Bailey, Esme
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Ok – for Q2 – just may raise more questions...ok

For Q3 0 the question is specific to when an allegation/accusation is made – what do we do at that stage?

Once an investigation is done, it is 'easier' to make a decision but do we take any action at the allegation/accusation stage? And what are those actions?

Thanks

From: Bailey, Esme
Sent: August 22, 2016 10:29 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hi Pat,

For Q2, the original ATIP release listed the case as founded. In the media response it was listed as inconclusive. PSI has now determined upon review, it is unfounded.

For Q3, they are explaining our process once an allegation is made. Pending the results of the investigation, the person may remain in their position, may be moved to another position or may be suspended without pay.

Thanks,
Esme

Thanks,

Esme Bailey
613-948-4013

From: Giolti, Patrizia
Sent: August 22, 2016 10:25 AM
To: Bailey, Esme
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: RE: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hi a few clarifying questions for you. Thanks...

From: Bailey, Esme
Sent: August 22, 2016 10:17 AM
To: Giolti, Patrizia
Cc: Dorion, Nicholas; Guibert-Wolff, Line
Subject: Pat for approval: CAT 3 media follow up sexual assault allegations (VICE)

Hello Pat. For approval. Responses have been approved by A/DG Security and Professional Standards and DG LR.
Thanks. Esme

Time of call: Aug17, 17:54 ET
Deadline: Unreasonable, reporter was advised we'd respond as soon as we could
Media: VICE
Contact: @vice.com,
Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

A1. While the CBSA will not speak to specifics of a particular case, we can say that whether or not a complaint is made to the CBSA, in cases where a CBSA employee is charged with a criminal offense, the CBSA will conduct an internal investigation.

Q2. In case #4 on the attached ATIP, the ATIP states that the complaint was determined to be founded. However, in your media response to me, you said the complaint was determined to be inconclusive. Which is it?

A2. Please note we incorrectly indicated the case was found to be inconclusive in our earlier response. In case #4 the CBSA conducted a full investigation and deemed the allegation to be unfounded. **a couple of issues here – the ATIP states 'founded' / we initially responded 'inconclusive' / now we are saying 'unfounded' ?

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once we are made aware of the allegations, CBSA management will determine, pending the result of an investigation * I believe the question is once allegations are made – what happens? Not following the result of an investigation

, if the employee may remain in the workplace, needs to be reassigned to less sensitive duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

Previous responses provided to the reporter

Response provided Aug19

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Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

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A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

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Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

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Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

- Why were police not involved if the complaint was founded?**
- Did the officer continue to work with the CBSA after the internal investigation concluded?**

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?**
- Was the police response local BC police or the RCMP?**

The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?**

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?**
- Did the SPSA find these allegations founded, unfounded or inconclusive?**

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)**
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?**

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.**
-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
 The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
-Were local police or RCMP involved?
-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch
 Canada Border Services Agency / Government of Canada

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Sent: August 22, 2016 11:28 AM
To: MacVicar, Roslyn; Piché, Jean-Stéphen; Xavier, Caroline; Walker, Christine (HQ)
Cc: Bouchard, Cindy; CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Gosselin, Gail; Ibrahim, Nesreen; Mackenzie, Joey; Saindon, Hubert; Mockler, Caroline; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Subject: For VP approval: CAT 3 media follow up sexual assault allegations (VICE)

Hello. For VP approval. Responses have been approved by A/DG Security and Professional Standards, DG LR and A/DG Comms. Seeking approval by 13:30 ET. Thanks. Esme

Time of call: Aug17, 17:54 ET

Deadline: Unreasonable. reporter was advised we'd respond as soon as we could

Media: VICE

Contact: @vice.com

Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

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Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 12:37 PM
To: Piché, Jean-Stéphen
Cc: Ibrahim, Nesreen; CBSA-ASFC-Media Relations
Subject: For your approval now: CAT 3 media follow up sexual assault allegations (VICE)

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A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?
- Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.
-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?
-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?
-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?
-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?
-Were local police or RCMP involved?
-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.
The complaint was first brought to the CBSA.

Esme Bailey
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Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 02:20 PM
To: Gosselin, Gail; Lizotte-MacPherson, Linda
Cc: Bouchard, Cindy; CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cloutier, Jacques; Ibrahim, Nesreen; Mackenzie, Joey; MacVicar, Roslyn; Piché, Jean-Stéphane; Saindon, Hubert; Xavier, Caroline; Walker, Christine (HQ); Mockler, Caroline; Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Subject: For PO approval: CAT 3 media follow up sexual assault allegations (VICE)

Hello. For PO approval. Responses have been approved by A/AVP Ops, VP Comptrollership and VP CAB/HR. Seeking approval by 15:30 ET. Thanks. Esme

Time of call: Aug17, 17:54 ET

Deadline: Unreasonable, reporter was advised we'd respond as soon as we could

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

A1. While the CBSA will not speak to specifics of a particular case, we can say that whether or not a complaint is made to the CBSA, in cases where a CBSA employee is charged with a criminal offense, the CBSA will conduct an internal investigation.

Q2. In case #4 on the attached ATIP, the ATIP states that the complaint was determined to be founded. However, in your media response to me, you said the complaint was determined to be inconclusive. Which is it?

A2. Please note we incorrectly indicated the case was found to be inconclusive in our earlier response. In case #4 the CBSA conducted a full investigation and deemed the allegation to be unfounded.

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once made aware of the allegations, CBSA management will determine, pending the result of an investigation, if the employee may remain in the workplace, needs to be reassigned to less sensitive duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

For awareness - Previous responses provided to the reporter

Response provided Aug19

Questions:

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Response provided Aug15

Q1. What is the SPISA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

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Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

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Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 03:22 PM
To: Piché, Jean-Stéphen
Cc: Ibrahim, Nesreen; CBSA-ASFC-Media Relations
Subject: For VP CAB awareness: Revised CAT 3 media follow up sexual assault allegations (VICE)

Hello. For VP CAB awareness. PO approved revised response (minor change to Q3). Thanks. Esme

Time of call: Aug17, 17:54 ET

Deadline: Unreasonable, reporter was advised we'd respond as soon as we could

Media: / VICE

Contact: @vice.com,

Issue: Allegations of sexual assault

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

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Questions about specific cases:

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The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

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PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

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-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

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The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

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-Why were the allegations determined to be unfounded?

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Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

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Case #5:

- How many officers were accused? Two?
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- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

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Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.
The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

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Porte-parole principale, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: August 22, 2016 05:17 PM
To:
Subject: RE: Your follow up questions for the CBSA

Please find responses to your remaining questions.

Q1. In the case of border services officer Carie Dexter Willis charged with sexual assault in April for alleged incidents dating back to 2003, was an internal complaint filed with the CBSA in this case? If so, when was it filed?

A1. While the CBSA will not speak to specifics of a particular case, we can say that whether or not a complaint is made to the CBSA, in cases where a CBSA employee is charged with a criminal offense, the CBSA will conduct an internal investigation.

Q2. In case #4 on the attached ATIP, the ATIP states that the complaint was determined to be founded. However, in your media response to me, you said the complaint was determined to be inconclusive. Which is it?

A2. Please note we incorrectly indicated the case was found to be inconclusive in our earlier response. In case #4 the CBSA conducted a full investigation and deemed the allegation to be unfounded.

Q3. What is your policy for when a CBSA employee is accused internally or externally of sexual assault? Are they automatically placed on paid leave? Or do they continue to work in an office? What happens to them?

A3. Once made aware of the allegations, CBSA management will determine, pending the result of an investigation, if the employee may remain in the workplace, needs to be reassigned to other duties or be removed from the workplace without pay. This determination is guided by the principles outlined in the Larson decision (2002 PSSRB 9). If the conclusion is that such a risk exists and cannot be mitigated, then management will consider suspension without pay of the employee, pending the outcome of management's investigation.

Best regards,
 Esme

Esme Bailey
 Senior Media Spokesperson, Corporate Affairs Branch
 Canada Border Services Agency / Government of Canada
 questions@cbsa-asfc.gc.ca / Tel: 613-957-6500/1-877-761-5945 / TTY : 866-335-3237

Porte-parole principale, Direction générale des services intégrés
 Agence des services frontaliers du Canada / Gouvernement du Canada
 questions@cbsa-asfc.gc.ca / Tél. : 613-957-6500/1-877-761-5945 / ATS : 866-335-3237

From: [mailto: @vice.com]
Sent: August 22, 2016 5:25 AM
To: Bailey, Esme
Subject: Re: Your follow up questions for the CBSA

Hi Esme,
 Thank you for this. Can you please give me a timeline on the other answers? Thanks.

On Friday, 19 August 2016, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

Apologies for the delay in getting back to you. Please find responses to your questions from Monday. We are still working on your other questions.

Q1. Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.)

A1. Cases 2 (inconclusive), 4 (unfounded), 5 (unfounded) and 8 (inconclusive). Please note the chart provided to you over two pages is one chart. The cases follow the same order on page 3 and 4 of your release package.

Q2. In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

A2. We can tell you that these two investigations remain ongoing.

Q3. ATIP and your subsequent information identifies 14 cases with 14 accused officers. Were any of the accused employees named in multiple complaints? (i.e. were 14 separate employees accused? or was it fewer than 14 because they were accused in multiple cases?)

-How many individual CBSA employees have been named in internal sexual assault complaints?

A3. One case was not included in the ATIP release package. There are 14 separate cases that involved 15 employees. None of the individuals were accused in more than one case.

Best regards,

Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

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From: [mailto:Esme.Bailey@vice.com]

Sent: August 15, 2016 2:11 PM

To: Bailey, Esme

Subject: Re: Your follow up questions for the CBSA

Also, to add to that: In eight cases, the accused is no longer with the CBSA, and in four cases, the accused is with the CBSA. What about the remaining 2 of 14 cases? What is the employment status of those two accused?

On 15 August 2016 at 14:01,

@vice.com> wrote:

One additional question for you based on Question 4 below:

Can you please break down for me in which four cases the officers remain with the CBSA? (By case number.) Thank you!

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
In four of the 14 cases, the individuals remain with the CBSA.

On 15 August 2016 at 13:58,

@vice.com> wrote:

Thank you very much, Esme. I may have additional questions for you. Appreciate this response.

On 15 August 2016 at 13:49, Bailey, Esme <Esme.Bailey@cbsa-asfc.gc.ca> wrote:

Please find the Canada Border Services Agency (CBSA) response to your questions.

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
- Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.

Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)

Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

In eight of the 14 cases, the individuals are no longer employees of the CBSA.
 In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.
The recruit is no longer with the CBSA.

Case #12:

- Did the officer continue to work with the CBSA after the internal investigation concluded?
- Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

- What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

- Why were police not involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
The allegation was founded.

Case #9:

- Why weren't police involved if the officer resigned?
- Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.
With the individual's resignation, we were not able to conclude the investigation.

Case #8:

- Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)
- How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?
- Were local police involved, or was it RCMP?

The police charged the male.
The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

- Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

- How many officers were accused? Two?**
- Were local BC police involved or RCMP?**

Two officers were accused.

Case #4:

- Was the officer the student's direct superior?**
- Why did the SPSA find the complaint unfounded?**

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?**
- Why were police not involved?**

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability. The complainants did not file a complaint with the police.

Case #3:

- How many victims were there in this case?**
- Were local police or RCMP involved?**
- Was the complaint first brought to the CBSA or to police?**

There was one victim in this case.

The complaint was first brought to the CBSA.

Best regards,
Esme

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

questions@cbsa-asfc.gc.ca / Tel: [613-957-6500](tel:613-957-6500) / [1-877-761-5945](tel:1-877-761-5945) / TTY : [866-335-3237](tel:866-335-3237)

Porte-parole principale, Direction générale des services intégrés
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From: [mailto:[@vice.com](mailto:)]
Sent: August 10, 2016 11:48 AM

To: Gingras, Julie; Bailey, Esme; CBSA-ASFC_QUESTIONS

Subject: Media request and follow-up questions — deadline Friday at 5 p.m.

Hello Julie and Esme,

Thank you for your help with my previous requests.

I have some follow-up questions (below) for you and CBSA media relations regarding a recent access to information request (attached). I need the answers by this Friday end of day (5 p.m. ET). This is a hard deadline.

Please let me know if you have any questions. My cell is _____ or you can reach me by email.

Thank you,

Questions for ATIP officers and/or CBSA media relations:

1) (For ATIP analysts) Are you 100 percent sure each allegation in the chart corresponds to the information in the other columns? The reason I'm asking is that in one case (7) there is only one victim but the gender is "females." And in another case (2) there are three accusers but the gender of the victim(s) is listed as "female." Is it possible the information got mixed up, or are these typos?

2) (For ATIP analysts) The request was for allegations dating back to 2003, but the earliest complaint is 2005. Were there no allegations between 2003 and 2005?

- 3) What is the SPSA? I'm assuming it stands for the internal investigation mechanism.
- 4) What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.
- 5) Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)
- 6) Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?
- 7) Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

The rest of my questions correspond to each case, which I've ordered chronologically:

Case #13:

- Why were police not involved if the complaint was founded?
- Did the officer continue to work with the CBSA after the internal investigation concluded?

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

Case #7:

- Why were the allegations determined to be unfounded?

Case #6:

- Which police service was involved? In which province? This information is listed for most other cases that involved police.
- Why was the complaint found to be inconclusive?

Case #5:

- How many officers were accused? Two?
- Were local BC police involved or RCMP?

Case #4:

- Was the officer the student's direct superior?
- Why did the SPSA find the complaint unfounded?

Case #2:

- If there were three accusers, why was this complaint found to be inconclusive?
- Why were police not involved?

Case #3:

- How many victims were there in this case?
- Were local police or RCMP involved?
- Was the complaint first brought to the CBSA or to police?

If you have to prioritize any one question, I am most interested in knowing whether accused CBSA employees continued to work for the CBSA after the internal investigations concluded. This information is listed in two of the 13 cases, and therefore should be released for the other 11.

--

Staff Reporter, VICE News

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Staff Reporter, VICE News

Bailey, Esme

From: Bailey, Esme
Sent: October 19, 2016 11:30 AM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Berlinquette, Tanya; CBSA-ASFC-Media Relations
Subject: RE: For LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

Thanks Ken.

Marc – Will LR be providing feedback shortly as deadline is 17:00 ET and this will require approval up to PO?

Thanks,
 Esme

Esme Bailey
 613-948-4013

From: McCarthy, Ken
Sent: October 18, 2016 10:04 PM
To: Bailey, Esme
Cc: Berlinquette, Tanya; Thibodeau, MarcR (HRB-HQ)
Subject: RE: For LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

Esme:

Here is data from Professional Standards.

In the past ten years, there were 16 cases of allegations of harassment (sexual/verbal/physical).

We do not have any data on allegations of bullying. We would include these in the harassment category.

Professional Standards investigated all 16 cases.

Labour Relations may have data on cases that were not handled by Professional Standards.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division
 Comptrollership Branch
 Canada Border Services Agency / Government of Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tel : 343-291-7686 / TTY : 1-866-335-3237

Directeur, Division de la sécurité du personnel et des normes professionnelles
 Direction générale du contrôle
 Agence des services frontaliers du Canada / Gouvernement du Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tél : 343-291-7686 / ATS : 1-866-335-3237

From: Bailey, Esme
Sent: October 18, 2016 4:09 PM
To: McCarthy, Ken
Cc: Berlinquette, Tanya; Thibodeau, MarcR (HRB-HQ)
Subject: RE: For LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

Hi Ken and Marc,

Following up on this request. We will require the approved response today or before 9:30 a.m. tomorrow to allow for required approvals.

Thanks,
Esme

Esme Bailey
613-948-4013

From: McCarthy, Ken
Sent: October 18, 2016 8:07 AM
To: Bailey, Esme
Cc: Berlinquette, Tanya; Thibodeau, MarcR (HRB-HQ)
Subject: RE: For LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

We should have numbers for you this morning.

You should expect numbers from LR as well, as harassment cases (up until a few weeks ago) were all coordinated through LR (with hired contractors/investigators). PSI is now starting to take them on.

Kenneth McCarthy

Director, Personnel Security and Professional Standards Division, Comptrollership Branch
Canada Border Services Agency / Government of Canada
ken.mccarthy@cbsa-asfc.gc.ca / Tel : 343-291-7686 / TTY : 1-866-335-3237

Directeur, Division de la sécurité du personnel et des normes professionnelles, Direction générale du contrôle
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ken.mccarthy@cbsa-asfc.gc.ca / Tél : 343-291-7686 / ATS : 1-866-335-3237

From: Bailey, Esme
Sent: October 17, 2016 12:38 PM
To: McCarthy, Ken; Thibodeau, MarcR (HRB-HQ)
Cc: Braham, Stephen; Bemeur, Chantal; Berlinquette, Tanya; Graham, Jason; Ibrahim, Nesreen; Karaikos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations; Jean-Paquette, Mélissa
Subject: For LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

Hello Ken and Marc,

For input and approval. We have received a media query from CBC about internal employee allegations of harassment and bullying (reporter is not seeking traveller complaint/allegation stats, only seeking stats about allegations made by

CBSA employees). I asked the reporter if she had received an ATIP and she did not disclose if she had. She indicates she is looking for stats.

I have provided some messaging to explain how the CBSA addresses allegations of improper or illegal behaviour and how we cooperate with police investigations. This messaging was approved when we were addressing media queries related to a sexual assault allegations ATIP.

As this is a CAT 3 media call, seeking approved response by 15:30 ET tomorrow to allow for additional approvals.

I will also flag to senior management.

Any questions, please let me know. I'm at 948-4013.

Thanks,
Esme

Time of call: 11:41 ET, Oct17

Deadline: 17:00 ET, Oct19

Media: Lisa Laventure / CBC Parliamentary Bureau

Contact: lisa.laventure@cbc.ca, 613-407-5294

Issue: Employee complaints

Background: Reporter is seeking stats to see if there is a trend. Reporter is interested in employee complaints of sexual, verbal or physical harassment and bullying within CBSA.

Questions:

Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?

Q2. How many complaints of bullying have been filed within the agency within the last ten years?

Q3. How many investigations have resulted from complaints of harassment within the same time period?

Q4. How many investigations have resulted from complaints of bullying within the same time period?

Q3/Q4. In addition to stats, we can provide the following:

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- Sexual and physical assaults are defined by the Criminal Code and may require police involvement.
- It is important to note that any CBSA Professional Standards Investigation of an allegation that requires police involvement is parallel to the police investigation and the CBSA cooperates fully with police investigations.

Esme Bailey

Senior Media Spokesperson, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

esme.bailey@cbsa-asfc.gc.ca / Tel: 613-948-4013 / TTY : 866-335-3237

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Agence des services frontaliers du Canada / Gouvernement du Canada

esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: October 19, 2016 04:37 PM
To: Walker, Christine (HQ); Piché, Jean-Stéphen; Xavier, Caroline; Cloutier, Jacques
Cc: Bouchard, Cindy; CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cléroux, Julie; Easton, Erika-Kirsten; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Roach, Lisa; Semaan, Nada; Archipow, Nancy; Braham, Stephen; Bemeur, Chantal; Thibodeau, MarcR (HRB-HQ); Berlinquette, Tanya; McCarthy, Ken; Karaikos, Panayiota; Lockwood, Dawn
Subject: RE: Heads up: CAT 3 media query employee harassment and bullying allegations/investigations

Please note we are still working on this request and will not be sending for approval today. We have received an extension until Friday.

Esme Bailey
 613-948-4013

From: Bailey, Esme
Sent: October 17, 2016 12:40 PM
To: Walker, Christine (HQ); Piché, Jean-Stéphen; Xavier, Caroline; Cloutier, Jacques
Cc: Bouchard, Cindy; CBSA-ASFC_Issues_Management-Gestion_des_questions; CBSA-ASFC-Media Relations; Cléroux, Julie; Easton, Erika-Kirsten; Graham, Jason; Ibrahim, Nesreen; Mackenzie, Joey; Maisonneuve, Mélanie; Roach, Lisa; Semaan, Nada; Archipow, Nancy; Braham, Stephen; Bemeur, Chantal; Thibodeau, MarcR (HRB-HQ); Berlinquette, Tanya; McCarthy, Ken; Karaikos, Panayiota; Lockwood, Dawn
Subject: Heads up: CAT 3 media query employee harassment and bullying allegations/investigations

Hello,

Heads up. We have received the following query from CBC. We are working with Professional Standards and HR to address and will send to VPs and PO for approval when ready. Deadline is 17:00 ET Wednesday.

Thanks,
 Esme

Time of call: 11:41 ET, Oct17

Deadline: 17:00 ET, Oct19

Media: Lisa Laventure / CBC Parliamentary Bureau

Contact: lisa.laventure@cbc.ca, 613-407-5294

Issue: Employee complaints

Background: Reporter is seeking stats to see if there is a trend. Reporter is interested in employee complaints of sexual, verbal or physical harassment and bullying within CBSA.

Questions:

- Q1.** How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?
- Q2.** How many investigations have resulted from complaints of harassment within the same time period?
- Q3.** How many complaints of bullying have been filed within the agency within the last ten years?
- Q4.** How many investigations have resulted from complaints of bullying within the same time period?

Bailey, Esme

From: Bailey, Esme
Sent: October 19, 2016 04:59 PM
To: Thibodeau, MarcR (HRB-HQ); McCarthy, Ken
Cc: Giguere, Pierre; Berlinquette, Tanya; Karaiskos, Panayiota; Lockwood, Dawn; CBSA-ASFC-Media Relations
Subject: LR and PSI input: CAT 3 media query employee allegations of harassment and bullying

Hello Marc and Ken,

I have received the following from PSI and LR. As there seems to be an overlap, please advise how to address as PSI indicates in the last 10 years there were 16 cases of harassment while LR indicates there were 100 in the last three years, which include bullying. How should this be presented?

For the 100 complaints listed by LR, were only 33 investigated? We should have an explanation why only certain complaints are investigated.

Do we want to speak to the 4 violence in the workplace complaints?

If easier, I can schedule a conference call tomorrow morning to discuss.

From PSI:

In the past ten years, there were 16 cases of allegations of harassment (sexual/verbal/physical). We do not have any data on allegations of bullying. We would include these in the harassment category. Professional Standards investigated all 16 cases.

From LR:

With the exception of 4 Violence in the Workplace complaints, bullying is usually presented by an employee in the form of a harassment complaint or grievance.

	Last Three Years (;
Number of harassment? Complaints including bullying	
Investigations Resulting From Complaints of Harassment	
Investigations Resulting From Complaints of Bullying	

Time of call: 11:41 ET, Oct17

Deadline: 17:00 ET, Oct21

Media: CBC Parliamentary Bureau

Contact: [Redacted]

Issue: Employee complaints

Background: Reporter is seeking stats to see if there is a trend. Reporter is interested in employee complaints of sexual, verbal or physical harassment and bullying within CBSA.

Questions:

Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?

Q2. How many complaints of bullying have been filed within the agency within the last ten years?

Q3. How many investigations have resulted from complaints of harassment within the same time period?

Q4. How many investigations have resulted from complaints of bullying within the same time period?

Q3/Q4. In addition to stats, we can provide the following:

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
- All CBSA employees are subject to a very strict codes of ethics and behaviour.
- CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
- All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
- Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
- Sexual and physical assaults are defined by the Criminal Code and may require police involvement.
- It is important to note that any CBSA Professional Standards Investigation of an allegation that requires police involvement is parallel to the police investigation and the CBSA cooperates fully with police investigations.

Esme Bailey
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esme.bailey@asfc-cbsa.gc.ca / Tél. : 613-948-4013 / ATS : 866-335-3237

Bailey, Esme

From: Bailey, Esme
Sent: November 2, 2016 04:34 PM
To: Guibert-Wolff, Line
Cc: Giolti, Patrizia; Dorion, Nicholas
Subject: RE: CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Okay. Thanks. Esme

Esme Bailey
 613-948-4013

From: Guibert-Wolff, Line
Sent: November 2, 2016 4:30 PM
To: Bailey, Esme
Cc: Giolti, Patrizia; Dorion, Nicholas
Subject: Esme for review - CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Esme,

Please see proposed response to Q1 and advise of concerns if any. If approved, I will resend for DG HR consult and approval. According to HR, the CBSA does not have a centralized database for harassment complaints.

Thank you.

Received: 20-16-11-01 / 11:50 ET

Media: CBC

Contact:

Deadline: Thursday, November 3, 2016 – 17:00 ET

Issue: Harassment complaints - I am the reporter working with producer on a story about workplace harassment at CBSA. She had asked media relations for an account of how many complaints of workplace harassment/bullying had been filed within the agency within the last 10 years. You provided statistics for the 2014-15 year until present - 100 complaints of harassment made by CBSA employees, with 33 of those resulting in investigations. I have a few follow-up requests for more statistical information.

Q1. Could you please provide us with the number of workplace harassment complaints, broken down by calendar year over the last five years?

A1. The CBSA does not have earlier regional statistics, and is unable to provide an accurate portrayal of the number of workplace harassment complaints prior to 2014-2015. Please find the data requested for 2014 to 2016.

2014/15	2015/16	2016/17
24	57	20

* Please note that the numbers differ slightly from what was previously provided because we updated the numbers to be from April 1, 2014 to November 1, 2016.

Q2. How many investigations were conducted into allegations of workplace harassment, broken down by calendar year, over the last five years?

A2.

2014/15	2015/16	2016/17
6	19	11

Q3. How many findings of harassment were made, broken down by calendar year, over the last five years?
A3.

2014/15	2015/16	2016/17
1	1	1

Q4. Of the investigations made in the last three calendar years, how many are complete? How many findings of harassment were made? (Q3 responds to the findings of harassment).
A4.

2014/15	2015/16	2016/17
3	8	1

As of November 1, 2016, CBSA has 36 complaints open at various stages of the process.

~~When allegations of harassment are received, the complaint is reviewed to determine whether or not the allegation(s) meet the definition of harassment as defined in the Treasury Board Policy on Harassment Prevention and Resolution. Allegations that meet the definition may be referred by the delegated Manager for further investigation by a third party. At any time during the process, the complainant and respondent may participate in the (voluntary) CBSA Informal Conflict Management System (ICMS) to resolve the situation through mediation.~~

Previous questions/response to reporter 2016-10-21

- Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?**
Q2. How many complaints of bullying have been filed within the agency within the last ten years?
Q3. How many investigations have resulted from complaints of harassment within the same time period?
Q4. How many investigations have resulted from complaints of bullying within the same time period?

A1-A4. The CBSA is able to provide you with statistics from 2014-2015 until present.

Between 2014-2015 until present, there have been 100 complaints of harassment made by CBSA employees. Please note that bullying is included within the harassment complaints. All allegations of harassment are taken seriously and are reviewed. The complainant and respondent may choose to participate in the CBSA Information Conflict Management System to resolve the situation through mediation. Of the 100 complaints, 33 resulted in investigations.

We can tell you the CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.

All CBSA employees are subject to a very strict codes of ethics and behaviour.

CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.

Line A.G.Wolff
(613) 952-0522

Bailey, Esme

From: Bailey, Esme
Sent: November 3, 2016 10:57 AM
To: Guibert-Wolff, Line
Cc: Giolti, Patrizia; Dorion, Nicholas
Subject: RE: Revised response CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Hi Line,

Please find my edits below.

Thanks,
 Esme

Esme Bailey
 613-948-4013

From: Guibert-Wolff, Line
Sent: November 3, 2016 10:48 AM
To: Bailey, Esme
Cc: Giolti, Patrizia; Dorion, Nicholas
Subject: Esme - Revised response CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Esme,

For review, please see revised response for A1 as provided by HR. Any issues of concern? If approved, I will resend for HR DG approval.

Thank you.

Received: 20-16-11-01 / 11:50 ET

Media: CBC

Contact:

Deadline: Thursday, November 3, 2016 - 17:00 ET

Issue: Harassment complaints - I am the reporter working with producer [redacted] on a story about workplace harassment at CBSA. She had asked media relations for an account of how many complaints of workplace harassment/bullying had been filed within the agency within the last 10 years. You provided statistics for the 2014-15 year until present - 100 complaints of harassment made by CBSA employees, with 33 of those resulting in investigations. I have a few follow-up requests for more statistical information.

Q1. Could you please provide us with the number of workplace harassment complaints, broken down by calendar year over the last five years?

A1. The CBSA currently does not have [redacted] comprehensive data to conduct a fulsome analysis. The Agency is currently working on a data integrity strategy to address the situation. Please find the data requested for 2014 to 2016.

2014/15	2015/16	2016/17
24	57	20

* Please note that the numbers differ slightly from what was previously provided because we updated the numbers to be from April 1, 2014 to November 1, 2016.

Q2. How many investigations were conducted into allegations of workplace harassment, broken down by calendar year, over the last five years?

A2.

2014/15	2015/16	2016/17
6	19	11

Q3. How many findings of harassment were made, broken down by calendar year, over the last five years?

A3.

2014/15	2015/16	2016/17
1	1	1

Q4. Of the investigations made in the last three calendar years, how many are complete? **How many findings of harassment were made? (Q3 responds to the findings of harassment)**

A4.

2014/15	2015/16	2016/17
3	8	1

As of November 1, 2016, CBSA has 36 complaints open at various stages of the process.

Previous questions/response to reporter 2016-10-21

Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?

Q2. How many complaints of bullying have been filed within the agency within the last ten years?

Q3. How many investigations have resulted from complaints of harassment within the same time period?

Q4. How many investigations have resulted from complaints of bullying within the same time period?

A1-A4. The CBSA is able to provide you with statistics from 2014-2015 until present.

Between 2014-2015 until present, there have been 100 complaints of harassment made by CBSA employees. Please note that bullying is included within the harassment complaints. All allegations of harassment are taken seriously and are reviewed. The complainant and respondent may choose to participate in the CBSA Information Conflict Management System to resolve the situation through mediation. Of the 100 complaints, 33 resulted in investigations.

We can tell you the CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.

All CBSA employees are subject to a very strict codes of ethics and behaviour.

CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.

Line A.G.Wolff
(613) 952-0522

Bailey, Esme

From: Bailey, Esme
Sent: November 3, 2016 01:40 PM
To: Guibert-Wolff, Line
Subject: RE: Esme - consulting / CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Line,

I would stick with Marc Thibodeau's wording. It explains the situation, we do not have the comprehensive data to provide stats farther back than 2014-2015.

Thanks,
 Esme

Esme Bailey
 613-948-4013

From: Guibert-Wolff, Line
Sent: November 3, 2016 1:32 PM
To: Bailey, Esme; Thibodeau, MarcR (HRB-HQ)
Cc: Giolti, Patrizia; Dorion, Nicholas
Subject: Esme - consulting / CAT 3 - Media Query CBC / Follow-up Stats request Harassment complaints

Esme,

Please see below. Minor edits to the response DH HR's version for A1. If you think it best, I will leave it. If approved, will consult HR once more.

Thank you.

Received: 20-16-11-01 / 11:50 ET

Media: / CBC

Contact:

Deadline: Thursday, November 3, 2016 – 17:00 ET

Issue: Harassment complaints - I am the reporter working with producer Lisa Laventure on a story about workplace harassment at CBSA. She had asked media relations for an account of how many complaints of workplace harassment/bullying had been filed within the agency within the last 10 years.

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Q1. Could you please provide us with the number of workplace harassment complaints, broken down by calendar year over the last five years?

A1. The CBSA currently does not have the comprehensive data set readily available to allow for annual comparisons for the previous years. Please find the data requested for 2014 to 2016.

A1. The CBSA currently does not have the comprehensive data set readily available (–) to allow for an annual comparison on a longer period (–) Please find the data requested for 2014 to 2016.

2014/15	2015/16	2016/17
24	58	18

* Please note that the numbers differ slightly from what was previously provided because we updated the numbers to be from April 1, 2014 to November 1, 2016.

Q2. How many investigations were conducted into allegations of workplace harassment, broken down by calendar year, over the last five years?

A2.

2014/15	2015/16	2016/17
4	20	7

Q3. How many findings of harassment were made, broken down by calendar year, over the last five years?

A3.

2014/15	2015/16	2016/17
1	2	1

Q4. Of the investigations made in the last three calendar years, how many are complete?

A4.

2014/15	2015/16	2016/17
3	8	1

As of November 1, 2016, CBSA has 36 complaints open at various stages of the process.

Previous questions/response to reporter 2016-10-21

Q1. How many complaints of harassment (sexual, verbal, physical) have been filed within the agency within the last ten years?

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We can tell you the CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.

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Line A.G.Wolff
 (613) 952-0522

ANALYSIS: IS IT HARASSMENT?

- In the TB, “**Policy on the Prevention and Resolution of Harassment**”:

Harassment (*harcèlement*) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

- In the TB “**Screening Tool for the Delegated Manager and the Harassment Prevention Coordinator**”, it is pointed out that:

Repetitious behaviour versus single event

It is important to consider the severity and impropriety of the behaviour (act, comment or display) in the **circumstances and context** of **each** situation. Essentially, the definition of harassment means that **more than one act or event need to be present** in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, frustrate or provoke a reaction from that person. It is a behaviour that with persistence, pressures, frightens, intimidates or incapacitates another person. Each behaviour, viewed individually, may seem inoffensive, however, it is the synergy and repetitive characteristic of the behaviours that produce harmful effects.

However, **one single incident** can constitute harassment when it is demonstrated that it is **severe** and has an **important and lasting impact** on the complainant.

- “**Sexual harassment**” is not specifically defined in the TB policy. In *Janzen v. Platy Enterprises Ltd. (1989)*, the Supreme Court of Canada broadly defined sexual harassment as “*unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.*” In at least one adjudication, a tribunal held that derogatory comments about a woman’s physical attributes was sexual harassment, even though it was a statement of ‘non-attractiveness’.
- In the Canada Human Rights Commission’s publication, “**Anti-Harassment Policies for the Workplace: An Employer’s Guide**” (http://www.chrc-ccdp.ca/pdf/ahpoliciesworkplace_en.pdf) examples of harassment include “...unwelcome remarks, slurs, jokes, taunts” and “...unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a relationship).”
- The following Analysis Templates provide a summary of the facts founded by the investigation, when compared with the definition of harassment (and sexual harassment) set out in the TB policy and caselaw:

Jurisprudence

CASE	FACTS	DISCIPLINE
<u>Bisaillon v CFIA</u> (2002 PSSRB 16)	A supervisor made jokes implying his employee was gay. The jokes suggested he participated in certain sexual practises. The supervisor also failed to act when he knew that other employees were making fun of the complainant.	<ul style="list-style-type: none"> • 1-day suspension for the jokes upheld. • 10-day suspension for allowing sexual harassment by other employees and abuse of authority - upheld.
<u>Cyr v Parks Canada</u> (2005 PSSRB 17)	An employee stared at numerous female students to the point where they felt uncomfortable. He also engaged in some unwelcome conduct with the employees.	<ul style="list-style-type: none"> • 16-day suspension for sexual harassment reduced to a 4-day suspension.
<u>De Lisa v. TB (CSC)</u> 2002 PSSRB 57	A parole officer sent an anonymous letter to a group of employees, alleging his supervisor didn't have the degree she required for the position. The officer also inappropriately accessed 12 offender files when he had no business reason to do so.	<ul style="list-style-type: none"> • Termination was upheld. The officers behaviour towards his supervisor was harassment. That, combined with the inappropriate accessing of files warranted dismissal.
<u>LaChance v TB (Agriculture Canada)</u> 166-2-26840 (1996)	A meat inspector threatened to punch a colleague in the face.	<ul style="list-style-type: none"> • Harassment founded. 3-Day suspension upheld.
<u>Nowen v TB (CSC)</u> 2001 PSSRB 47	A correctional officer was unhappy that a union rep denied reimbursement of his travel expenses to a hearing of his own grievance. Over the course of a month, he repeatedly requested the reimbursement each day after the officers briefing meeting, calling the rep 3-4 times per shift, visiting him once at his work location, calling him at his home 20x, and showing up at his home x 2.	<ul style="list-style-type: none"> • Harassment founded & Financial Penalty = 3 days pay upheld.

TEMPLATE TO ASSIST WITH ANALYSIS: IS IT HARASSMENT?

- **Harassment** (*harcèlement*) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.
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It is important to consider the severity and impropriety of the behaviour (act, comment or display) in the **circumstances and context** of **each** situation. Essentially, the definition of harassment means that **more than one act or event need to be present** in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, frustrate or provoke a reaction from that person. It is a behaviour that with persistence, pressures, frightens, intimidates or incapacitates another person. Each behaviour, viewed individually, may seem inoffensive, however, it is the synergy and repetitive characteristic of the behaviours that produce harmful effects.

However, **one single incident** can constitute harassment when it is demonstrated that it is **severe** and has an **important and lasting impact** on the complainant.

Harassment Log Windsor-St. Clair Region

2016-12-22

Employee Name	Date Filed	Date Sent to RDG	Outcome of Complaint	Comments	ICMS	Corrective Measures
	12-Oct-10	29-Nov-10	Allegations do not constitute harrassment	Personal Harrassment -	Declined	
	08-Jul-10	22-Jul-10	Allegations do not constitute harrassment	Personal Harrassment -	Declined	
	26-Jul-10		Withdrawn	Personal Harrassment -		
	29-Jun-10	02-Jul-10	Withdrawn, resolved with mediation	Personal Harrassment -	Yes	
	19-May-10	24-Jun-10	Withdrawn - Sept. 21/10	Personal Harrassment -	Yes	
	10-Mar-10	n/a	Withdrawn	Personal Harrassment -	Declined	
	22-Dec-09	22-Dec-09	Allegations do not constitute harrassment	Personal Harrassment -		
	16-Oct-09		Closed-Not pursued	Personal Harrassment -		
	08-Oct-09	10-Oct-09	Complaint withdrawn - October 15, 2009	Personal Harrassment -		
	08-Sep-09	18-Nov-09	Complaint Dismissed	Complaint	Declined	
	06-Oct-09	09-Dec-09	Allegations do not constitute harrassment	Personal Harrassment -	Declined	
	05-Oct-09		Complaint withdrawn - October 20, 2009	Personal Harrassment -		
	25-Aug-09	25-Aug-09	Not Accepted	Personal Harrassment -		

Harassment Log Windsor-St. Clair Region

2016-12-22

Employee Name	Date Filed	Date Sent to RDG	Outcome of Complaint	Comments	IGMS	Corrective Measures
	15-Dec-08		Withdrawn-February 19, 2009-Employee using grievance process to pursue complaint.	Personal Harrassment -		
	28-Jul-08	08-Sep-08	Personal	Personal Harrassment -	Declined	
	05-May-07	25-Jun-07	Not Accepted -single incident-Closed	Personal Harrassment-	Offered before -declined	coaching
	22-Mar-07	10-Jun-07	Not Accepted-single incident-Closed	Personal Harrassment-	Offered before -declined	coaching
	17-Nov-06		Mediation - Agreement -Withdrawn Mar13/07	Personal Harrassment -		
	28-Nov-06	10-Jan-07	Not Accepted Managerial Resp - Closed	Personal Harrassment -		
	11-Jul-06	11-Jul-06	Not Accepted Managerial Resp - Closed	Personal Harrassment -		
	04-Apr-05	04-Apr-05	Mediation - Agreement reached	Personal Harrassment -		
	01-Apr-05	01-Apr-05	Mediation - Agreement reached	Personal Harrassment -		
	19-Aug-05	25-Aug-05	Not Accepted Managerial Resp - Closed	Personal Harrassment -		
	22-Dec-05	22-Dec-05	Complaint withdrew - February 8, 2006	Personal Harrassment -Mediation Held on Jan. 12, 2006		
	04-Feb-05		No further information to be received	To be concluded by CIC management		
	10-May-05	11-May-05	Personal-withdrawn	Personal Harrassment -		
	27-Oct-04	27-Oct-04	Complaint & Griev withdrawn Dec. 16/04	Personal Harrassment		

**Harassment Log
 Windsor-St. Clair Region**

2016-12-22

Employee Name	Date Filed	Date Sent to RDG	Outcome of Complaint	Comments	ICMS	Corrective Measures
	30-Dec-04	30-Dec-04	Mediated Agreement	Personal Harrassment		
	26-Oct-03	26-Oct-03	Personal	Personal Harrassment		
	01-Oct-03	01-Oct-03	Personal	Personal Harrassment		
	18-Oct-02	22-Oct-02	Personal	Personal Harrassment		
	01-Oct-02	01-Oct-01	Personal	Personal Harrassment		
	04-Jul-02	04-Jul-02	Personal - Mediation - agreement reached	Personal Harrassment		
	04-Feb-02	04-Feb-02	Mediation - Agreement reached	Personal Harrassment		
	19-Jun-01	19-Jun-01	Personal - Founded	Personal Harrassment		
	07-May-01	08-May-01	Personal/Sexual -	Admin. Action -		
	29-Jun-00	29-Jun-00	Unfounded - Resolved-Managerial Resp	Personal Harrassment -		
	13-Jun-00			Hold Pending Outcome of IAD Inv.-		
	27-Mar-00	27-Mar-00	Withdrawn	Personal Harrassment -		
	29-Oct-99	29-Oct-99	Complaint made via the PSC - unknown	Personal Harrassment -		



Treasury Board of Canada
Secrétariat

Secrétariat du Conseil du Trésor
du Canada

Policy on the Prevention and Resolution of Harassment in the Workplace

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Preamble

As the employer of the federal Public Service, the Treasury Board is committed to providing a work environment where all persons working for the Public Service are treated with respect and dignity.

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Training agents are also supportive of this and involved in initiatives to promote such an environment.

Harassment affects workplace and individual well-being and will not be tolerated. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation. The application of this policy will help create a work environment where all are treated with respect and dignity. It will not only promote the well-being of all in the workplace, but it will reinforce those values of integrity and trust that are the foundation of a sound organization.

Dealing with harassment can be a complex matter. What one person may consider to be proper behaviour, another may believe to be harassment. Note that the proper exercise of one's authority or responsibility does not generally constitute harassment. The Appendix provides some examples for better understanding.

The *Canadian Human Rights Act* provides every person in the workplace the right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds.

The Treasury Board policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the *Canadian Human Rights Act*, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

The policy promotes the prevention of harassment and focuses on the prompt resolution of harassment. Whether the source of harassment comes from within the Public Service or from outside, any allegation of harassment is serious and should be taken seriously. Harassment needs to be addressed with sensitivity, promptness and discretion. Open communication and early intervention are essential in preventing and resolving harassment.

Effective date

The effective date of this policy is June 1, 2001.

Policy objective

The purpose of this policy is to foster a respectful workplace through the prevention and prompt resolution of harassment.

Policy statement

Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the Public Service, whether or not they are employees, should enjoy a harassment-free workplace.

Application

This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the *Public Service Staff Relations Act*.

The complaint process as defined in this policy applies to federal public service employees. Though other persons who work for the Public Service cannot access the complaint process described in the policy, managers are nevertheless expected to abide by the spirit of the policy and ensure that their harassment concerns are addressed.

The policy does not apply to complaints from the public. The responsibility for follow-up on such complaints lies with departments/organizations.

Definitions

Harassment (*harcèlement*) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Complaint (*plainte*) - is a formal allegation of harassment submitted in writing to the delegated manager, and which is based on actions defined as *harassment*.

Delegated manager (*gestionnaire délégué*) - is a senior executive designated by the deputy head, accountable for the harassment complaint process.

Mediation (*médiation*) - is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

Policy requirements

- Deputy heads are responsible for fostering a work environment free of harassment.
- All employees must be informed of this policy.
- Learning opportunities related to the *Policy on the Prevention and Resolution of Harassment in the Workplace* must be made available to employees and managers/supervisors.
- Employees must be informed of the name or title and address of the delegated manager (s) in his or her department/organization.
- Early resolution should be used to resolve problems at the outset.
- Mediation must be offered before an investigation is initiated.

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- The complaint process, including the investigation if necessary, should be completed without undue delay, normally in six months or less.
- Corrective action must be timely in all situations of harassment, whether it involves employees or other persons working for the Public Service.
- Harassment may result in corrective or disciplinary measures being taken, up to and including termination of employment. Disciplinary or corrective measures may also be taken against the following: any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.
- If a complaint of harassment is determined at the departmental level to be unfounded, and is pursued in the courts or at a tribunal, the respondent's department/organization will provide legal assistance to the respondent.
- Departments/organizations must meet the requirements of this policy.

Responsibility and authority

The ultimate responsibility and authority for applying this policy rests with the deputy head and his or her authorized representative(s).

Expectations

Employees

- (a) Employees are expected to act towards other individuals professionally and respectfully.
- (b) Employees who believe they have been treated in an improper and offensive manner are expected to communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease. They can get help or guidance from the supervisor, the person designated by the department/organization, or the union.
- (c) They can expect to be informed of the Treasury Board policy.
- (d) They can expect prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager.
- (e) They can expect to be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint.
- (f) They will be encouraged to participate in a problem resolution process before proceeding with the

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complaint process.

Complainants, respondents and witnesses

- (a) Complainants, respondents and witnesses are expected to provide information as required in the steps noted below under "Complaint process".
- (b) They are expected to co-operate in the complaint process if and when called upon to do so.
- (c) They are expected to limit the discussion of the complaint to those who need to know.
- (d) They can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.
- (e) Complainants and respondents will receive information related to the complaint in writing, including allegations, as noted in the steps below, under "Complaint process", and in accordance with the principles of procedural fairness.
- (f) Complainants and respondents may have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process.
- (g) Complainants and respondents can expect to review a copy of the draft report. They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.
- (h) If the complaint is founded, complainants will be informed verbally whether corrective or disciplinary measures will be taken as a result of their complaint.
- (i) If the complaint is frivolous or in bad faith, respondents will be informed verbally whether corrective or disciplinary measures will be taken.
- (j) Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined at the departmental level to be unfounded, is pursued in the courts or at a tribunal.

Managers

- (a) Managers are expected to lead by example and to act respectfully in dealings with employees and other persons working for the Public Service.
- (b) They can expect to have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution.
- (c) They are expected to ensure that employees are aware of the policy and to remind them of its contents as deemed necessary.

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(c) They are expected to ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.

(e) They are expected to intervene promptly when they become aware of improper or offensive conduct and to involve the parties in resolving the problem.

(f) They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.

(g) They are expected to handle all harassment situations confidentially and to ensure that others act accordingly.

(h) They are expected to address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships.

Delegated managers

(a) Delegated managers are expected to be impartial in any complaint process in which they are involved.

(b) They can expect to have access to learning opportunities related to their role and responsibilities as delegated managers.

(c) They are expected to apply the established steps in the complaint process.

(d) They are expected to take the necessary action to ensure the confidentiality of complaints.

(e) They are expected to ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.

(f) They are expected to offer mediation and to ensure that the mediator or co-mediators meet the requirements of the Shared Mediators Program for Cases of Harassment or Conflict in the Workplace;

(g) They are expected to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;

(h) They are expected to assign a mandate to the investigator(s) and ensure that persons conducting investigations are qualified in accordance with the Competencies Profile for Internal and External Harassment Investigators, that they are impartial, that they have no supervisory relationship with the parties, and that they are not in a position of conflict of interest.

(i) They are expected to ensure that corrective and/or disciplinary measures are taken, where warranted.

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(j) They are expected to ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.

(k) They are expected to ensure that parties are provided with the information to which they are entitled.

Investigators

(a) Investigators are expected to meet the requirements as outlined in the Competencies Profile for Internal and External Harassment Investigators.

(b) They are expected to apply the principles of procedural fairness.

(c) They are expected to abide by their assigned mandate.

Early problem resolution

The objective of early resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner. The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary. An allegation of harassment is serious. If a person working for the Public Service believes that he or she has been harassed, the following actions should be taken.

The person who feels offended by the actions of another person working for the Public Service is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

Complaint process

The complaint process applies to federal public service employees. Other persons working for the Public Service who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with

the delegated manager. All steps should be completed without undue delay, normally in six months or less. Departments must establish time frames appropriate to their particular organizations, in consultation with their union officials.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

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If allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services as noted above under "Delegated managers", section (f).

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must meet the requirements as noted previously under "Delegated managers", section (h). The investigator must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to proceed to Step 6.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

Resource body

Under an agreement with the Treasury Board of Canada Secretariat, the Public Service Commission will act as an expert resource body by developing programs and providing services to departments in the prevention and resolution of harassment in the workplace, in such areas as training, mediation and investigation.

Other recourse

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, employees have the right to file a complaint with the Canadian Human Rights Commission.

Acts including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

If a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this policy will not proceed further and the file will be closed.

Monitoring

Treasury Board of Canada Secretariat and departments/organizations will work together to monitor results in achieving the policy objective and statement.

References

Access to Information Act
Canadian Human Rights Act
Criminal Code
Official Languages Act
Privacy Act
Public Service Employment Act
Public Service Staff Relations Act

Enquiries

Enquiries relating to this policy should be referred to the responsible officer designated in departmental/organizational headquarters, who in turn may direct questions regarding interpretation to the Human Resources Branch of the Treasury Board of Canada Secretariat.

Appendix - Guide for determining what constitutes harassment

Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Is the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*. The prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

The following are some examples, but not an exhaustive list, to clarify what is meant by "harassment".

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> ■ <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. ■ Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> ■ Criticizing an employee in public. 	<ul style="list-style-type: none"> ■ Allocating work. ■ Following-up on work absences. ■ Requiring performance to job standards. ■ Taking disciplinary measures. ■ A <i>single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> ■ <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> ■ Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> ■ Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> ■ Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> ■ Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> ■ Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.
<ul style="list-style-type: none"> ■ Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. ■ Unwelcome sexual advances. 	<ul style="list-style-type: none"> ■ Making sexually suggestive remarks. ■ Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> ■ A social relationship welcomed by both individuals. ■ Friendly gestures among co-workers such as a pat on the back.

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Sexual and physical assault are covered by the *Criminal Code*.

Date Modified: 2001-06-01

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An intervention to resolve complaints and conflicts through co-operation and good faith

Mediation

Linda Kassay
Informal Conflict Management System (ICMS)
Advisor/Coordinator

Telephone: (905) 354-2107

A rapid process

The mediator meets with the parties separately or together, on a timetable that respects the nature of the dispute and the wishes of the people involved.

The rules

- The parties agree to participate in the process of their own free will in a safe environment, and to consider their respective interests openly.
- The process can be undertaken at any stage in a conflict.
- All other formal redress action is suspended, at least temporarily.
- The parties may be accompanied by a person of their choice.
- There is no attempt to lay blame.
- The mediator is neutral and impartial.
- Communications are confidential.
- Solutions are equitable, reasonable and non-prejudicial.
- The agreement is not made public and does not set a precedent.

Mediation allows the parties to:

- retain control over the process and decisions;
- save time and avoid problems associated with other dispute-resolution mechanisms;
- reestablish trust and dialogue;
- freely express their specific needs, interests and viewpoints;
- identify the issues, understand the often deeply rooted nature of the dispute, and clearly assess the situation;
- create alternative ideas and assess together the options likely to resolve the dispute in a way that is satisfactory to all concerned;
- negotiate the terms of an agreement to which they have freely consented; and
- face the future with confidence, maintaining open channels of communication.

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Une intervention en vue de la résolution des plaintes et des conflits grâce à la collaboration et à la bonne volonté

La médiation

100 rue Metcalfe
a/s Lucie Carle
9^{ième} étage
Ottawa (Ontario) K1P 5M1

Téléphone: (613) 948-9848

Un processus rapide

Le médiateur rencontre les parties séparément ou ensemble, selon un calendrier adapté à la nature du différend et à la volonté des parties intéressées.

Les règles

- Les parties acceptent de participer au processus de plein gré dans un environnement sécuritaire et de considérer leurs intérêts respectifs avec ouverture.
- Le processus peut être entrepris à n'importe quel stade du conflit.
- Tout autre recours formel est suspendu, au moins temporairement.
- Les parties peuvent être accompagnées par une personne de leur choix.
- On ne cherche pas un coupable.
- Le médiateur est neutre et impartial.
- Les communications demeurent confidentielles.
- Les solutions sont équitables et raisonnables, et ne portent préjudice à aucune partie.
- Il s'agit d'une entente confidentielle qui ne crée pas de précédent.

La médiation permet aux parties intéressées :

- d'exercer un contrôle sur le processus et les décisions;
- de gagner du temps et d'éviter les ennuis liés à d'autres processus de règlement de litiges;
- de rétablir la confiance et le dialogue;
- d'exprimer librement leurs besoins, leurs points de vue et leurs intérêts particuliers;
- de découvrir les problèmes, de comprendre la nature, parfois profonde, du litige et d'évaluer clairement la situation;
- de chercher de nouvelles idées et d'évaluer ensemble diverses options qui pourraient mettre fin au différend de façon satisfaisante pour tous;
- de négocier les conditions d'une entente à laquelle elles auront librement consenti;
- de se tourner résolument vers l'avenir et de maintenir une communication ouverte entre elles.

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INFORMAL CONFLICT MANAGEMENT SYSTEM (ICMS)

What is Mediation?

Mediation is one of the options available to all CBSA employees through the ICMS program. When people are faced with conflicts that they are unable to resolve themselves, a neutral third party can help them to discuss the issues in a safe environment.

A mediator does not provide solutions or tell those involved what to do, rather they help to direct the conversation so that the interests of both sides can be heard. Mediation is a confidential process that allows people in conflict to talk about what really matters. With the mediator present to assist them with their discussion, people are often able to talk about things that they could not talk about on their own.

Mediations are future focused – as are all interest based discussions – encouraging everyone involved to look to what needs to be done to make the changes that will help to bring about a healthy work environment. Mediation is not about placing blame; it is about understanding and creating solutions that work. The persons involved in the conflict create their own solutions to the issues – and many times, embark on a renewed relationship with one another.

As with all ICMS processes, mediation is voluntary, and someone of their choice may accompany the persons involved. This process can be undertaken at any stage in a conflict. During a mediation, formal recourse is suspended, at least temporarily, as the parties attempt to create their own solutions.

It's important to remember that ICMS does not replace your rights-based system. Discuss your options with your union rep, your manager or the ICMS Advisor

If you would like more information about any of the ways that Mediation and our ICMS program can help you or someone you know, contact Linda Kassay, Regional ICMS Advisor/Coordinator: (905) 354-2107 or Linda Kassay@cbsa-asfc.gc.ca.



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Informal Conflict Management System

Services Offered

Manage conflict before it manages you.

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- [Assistance at a Difficult Conversation](#)
- [Awareness Briefing](#)
- [Conflict Skills Coaching](#)
- [Group and Workplace Services](#)
- [Mediation](#)
- [Protect your Time to File a Grievance](#)
- [Training Workshops](#)

Advice on your Options

"I found myself in a conflict with my supervisor, so I sought advice from my ICMS advisor. It was really helpful to examine my options, to have my situation looked at by a second, impartial set of eyes, and to have more information to make my decision on the next step. The service was absolutely confidential and I could bring my union steward with me when I wanted more support."

- employee

If you're not sure how to approach a particular situation or if you don't know where to turn, talk to your supervisor, your union representative or your regional Informal Conflict Management System (ICMS) advisor/coordinator.

Discussing your situation with your ICMS advisor/coordinator can help you to understand your situation, to collect all the facts and to see the bigger picture — something that might not be easy when you are stressed. The ICMS is a confidential service just like the Employee Assistance Program. Often, discussing a problem with a neutral third person helps us to focus and to consider more options.

Some issues at work can cause us to think about making a complaint or filing a grievance. The ICMS does not try to replace that right or those options. It simply offers you faster, less formal options to consider, and a chance to confidentially discuss issues and seek less adversarial approaches.

ICMS advisors/coordinators can also help to bring parties together on your behalf and will encourage you to involve your union representative or an advocate, if you wish, at any time.

You can always switch between the ICMS and formal complaint

mechanisms if it makes sense to everyone involved. Some workplace issues are not suitable for the ICMS so ICMS advisors/coordinators will help you to understand your options.

Contact your regional ICMS advisor/coordinator

Assistance at a Difficult Conversation

"I would like to thank you for coming to the meeting yesterday with my employee. I must tell you that at first, I was apprehensive. As you found out, I have not been a superintendent very long and it seemed like everyone in our new team was working against each other. I can't tell you how important it was for me to learn that I am not the only one who is worried and I want to thank you for encouraging my employee to speak up about the need for more training. I think we just took a first step towards breaking the silence and getting to know each other better."

- supervisor

Sometimes, it can be useful to have a neutral person help arrange and/or facilitate a discussion between you and another person or persons with whom you are experiencing conflict.

Your regional Informal Conflict Management System (ICMS) advisor/coordinator can help you prepare for, arrange and conduct an informal discussion to resolve issues.

A difficult conversation can be challenging but talking together is often a simple way to share information and clear up rumours. Occasionally, two people or a small group may want to go a step further and agree on some common points of interest or to plan future steps.

Your ICMS advisor/coordinator does not make decisions for you, but rather he or she helps all the parties involved to have a productive conversation. He or she will help you to set ground rules so that the conversation is respectful and safe. The goal is to take what may appear to be a difficult conversation and make it easier.

Contact your regional ICMS advisor/coordinator

Awareness Briefing

"We invited our local ICMS advisor to a group meeting and, in 10-15 minutes, she was able to give us the key information on ICMS services in a nutshell. It was nice to get to know her and to find out about where we should go if we ever need advice on workplace conflict."

- employee

Do you or members of your group want to know more about the Informal Conflict Management System (ICMS) and its services? Invite an ICMS representative to a meeting or an event to promote the ICMS and to provide

information and increase awareness.

If requested, we are happy to co-present with representatives from your union, labour relations, the Employee Assistance Program or other service providers.

The ICMS program also welcomes the opportunity to participate in staff development sessions to learn more about your operations.

ICMS awareness briefing

Contact your regional ICMS advisor/coordinator

Conflict Skills Coaching

"An employee approached me about an interpersonal issue between her and her boss. I suggested that she attend some conflict skills coaching sessions with an ICMS advisor. It worked. The coaching gave her the skills she needed to handle a pretty difficult meeting and now she knows when is the best time to meet and how to avoid a hostile situation. She's now more aware of how she responds to situations so she can lessen her frustration and solve issues better."

- union steward

Conflict coaching helps you to develop new skills that allow you to clearly define your goals and concerns when faced with a challenging situation. The coach does not make decisions for you. He or she will, however, ask questions and highlight opportunities for and potential obstacles to resolution. Coaching can bring clarity to a situation and help you decide on an approach that works for you.

Sometimes we need help to improve our listening skills, to understand the impact of the words we choose to use and to decipher the non-verbal signals of other parties. The coach will work with you to analyze the elements of a conflict and prepare you to address a conflict using an interest-based approach.

Contact your regional ICMS advisor/coordinator

Group and Workplace Services

"Thank you for running such a professional group meeting this morning. I can tell you that I hardly slept last night and I wasn't looking forward to having everyone discuss this topic with the director there. I was surprised by how well everyone handled it. I didn't agree at first but now that I've had time to think about it a bit more, I think their idea is good, at least the director thinks so. And that's half the battle. I will let you know how it goes. Thank you for your honesty. Very best."

- manager

Your regional Informal Conflict Management System (ICMS)

advisor/coordinator is trained to facilitate meetings, to assist groups to clarify goals and expectations, to conduct team-building workshops and to assess workplace dynamics. Although it is common sense to intervene as soon as possible when there is a group conflict, ICMS advisors/coordinators understand that working with groups can pose additional difficulties if not handled properly.

Contact the ICMS program for information about services that may assist with conflict resolution or prevention in groups or teams. In some cases, the ICMS program can also help you link up with other organizational development or conflict resolution consultants.

Contact your regional ICMS advisor/coordinator

Mediation

"I truly think this is a tool that should be used in many instances before proceeding with a more formal disciplinary mechanism (e.g. grievance, complaint). The ICMS approach is a flexible and comfortable process to allow parties in conflict to freely and safely discuss issues and work towards a resolution. Having a mediator present allows everyone to have a turn to tell his or her story and it provides a convenor (if necessary) to intervene and diffuse uncomfortable situations and an impartial person to guide people through difficult issues. Our mediator was quick to put people at ease and was very fair and impartial in her facilitation and guidance throughout the meetings. She asked pointed questions that permitted the parties to open up and see the situation from a different perspective."

- labour relations advisor

All mediators at the Canada Border Services Agency have taken formal courses in mediation and have been approved by the union and management to conduct mediations. All lead mediators with the Informal Conflict Management System (ICMS) program are tested and accredited to a national standard.

Mediation is completely voluntary and offers two parties the opportunity to avoid or take a time out from a formal complaint process and look at common interests. Often with complaints, people become fixed on positions with little knowledge of the impact on or motivation of the other party. When requested, a mediator will bring two parties together in a confidential setting (information shared in mediation cannot be used in formal proceedings unless it is discoverable) and attempt to look at each party's goals and how they can find common ground. Mediation can reduce the possibility of a formal process rendering a decision in favour of one party. Instead, the goal is to try to let the parties create their own agreement that meets their balanced interests. If mediation does not succeed, then the parties can continue to use formal processes.

If you are interested in mediation, contact your union representative, labour relations advisor or ICMS advisor/coordinator. You or any of these support people can find out if the other party is open to using mediation. Parties that have used mediation often report that they struggled at first with the decision to engage the other party in the process but in the end, they strengthened their future working relationship by reaching a joint agreement together.

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[CBSA approved mediators](#)

[More information on mediation](#)

[Contact your regional ICMS advisor/coordinator](#)

Protect your Time to File a Grievance

"I couldn't decide if I should file a formal complaint of harassment or not. My deadline to file was approaching. When my union steward explained my options, I found out that maybe I could try to solve the situation using informal options with the ICMS. I e-mailed my ICMS advisor and briefly discussed the situation. He was able to place my timeline to file a complaint on hold until we had time to meet, chat and decide if the ICMS was a better way to go."

- employee

There is an agreement between management and the unions that allows you to place your deadline to file a complaint or grievance on hold while you talk with an Informal Conflict Management System (ICMS) advisor and examine informal solutions using the ICMS. If you decide to use the ICMS, and the other party agrees to participate, your deadline will continue to be on hold (i.e. in abeyance) until you successfully resolve your issue or it is decided that a complaint or grievance is really the best way to go.

You can place your time limit on hold by contacting your ICMS advisor by telephone or by e-mail. To learn more about this feature of the ICMS, contact your local labour relations advisor, union representative, supervisor or your regional ICMS advisor/coordinator.

[More on the ICMS abeyance protocol](#)

[Contact your regional ICMS advisor/coordinator](#)

ICMS Training Workshops

"I attended ICMS training recently. I found it to be interactive and I learned a lot."

- employee

Your regional Informal Conflict Management System (ICMS) advisor/coordinator is available to meet with you and to customize training and learning to meet your needs. The ICMS program conducts training to improve employees' understanding of how to prevent conflict, how to communicate and strengthen work relationships and team dynamics, and how to manage conflict when it occurs.

In addition to the customized training that is available to individuals or groups, the ICMS program also offers the following courses. These popular courses are informative and easy to follow. If you are interested in taking

one of these courses or having one of them presented to your group, please contact your regional ICMS advisor/coordinator. Don't delay, order these courses today!

ICMS @ Work

This two-day workshop is ideal for managers, human resources professionals, union representatives and employees who want to understand the new world of the ICMS.

In addition to explaining the ICMS program and its role and responsibilities, the workshop also clarifies conflict management and gives participants the opportunity to strengthen their communication and relationship-building skills.

The workshop also gives participants a chance to reflect on and discuss their own experiences with conflict and their expectations of the ICMS.

Generations

Communication difficulties and conflict between generations is nothing new and these difficulties often cross over from family life to the work environment. Each generation imposes its values, vision, style of communication and expectations upon the next.

The way we think and our attitudes about work are shaped by the social, political and economic contexts in which we grow up. This course aims to help bridge generational gaps by helping participants learn more about people's differences. With an increased understanding, relationships and communication between different generations can be adjusted and improved.

The Power of Words

Our thoughts are conveyed using words, through words, and our words translate and convey our beliefs. The words we choose to use affect the way we communicate and, consequently, what we experience. We can therefore change the way we think, our emotional state and our way of life.

This course encourages participants to understand what might motivate someone to choose words that create barriers between people in specific situations. We look at the better types of words to use that help open lines of communication and make conversations easier and potentially more enlightening for both parties.

More detailed workshop information

Contact your regional ICMS advisor/coordinator

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Informal Conflict Management System

Frequently Asked Questions

Manage conflict before it manages you.

- [Can you give me a quick snapshot of ICMS and why we have it?](#)
- [Who will be involved in the development of CBSA's ICMS program?](#)
- [How will using interest-based processes \(negotiation, mediation and so forth\) affect my rights, particularly if they don't work?](#)
- [Why does my manager need to know that I am using interest-based processes?](#)
- [What is the difference between a conflict and a dispute?](#)

Can you give me a quick snapshot of ICMS and why we have it?

Every employee has a right to work in an environment in which personal integrity is never compromised, where employees respect one another and work together with professionalism.

The CBSA Informal Conflict Management System (ICMS) plays an integral role in enhancing and maintaining this environment. ICMS is part of the large-scale culture change envisioned by the Public Service Modernization Act, which seeks to modernize the human resource regime of the Public Service. In part, this focuses on strengthening labour-management relations and changing the culture to a more cooperative and collaborative style of working together.

ICMS is a systematic approach to the prevention, management and early resolution of conflict through interest-based approaches. It emphasizes collaborative problem-solving approaches and a dialogue between those involved in a dispute so that they can address their differences directly and early. It encourages a shift, when appropriate, from formal (rights-based) recourses to less formal (interest-based) processes such as mediation, facilitation and dialogue.

The CBSA ICMS design reflects the input of our employees, managers and union representatives. We encourage our employees, managers and union representatives to use the ICMS services. This approach supports the concept that, with better communication and trust, reasonable solutions to most disputes can be found. The emphasis is on discussing situations openly and working together to achieve satisfying results. By introducing a more effective way of handling workplace disputes, the CBSA is striving to improve service and secure its position as an employer of choice.

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For more information on the Informal Conflict Management System, please contact your Regional ICMS Advisor or the ICMS National Coordinator.

Who will be involved in the development of CBSA's ICMS program?

In April of 2005, the Joint-ICMS Steering Committee comprised of our national union presidents and members of CBSA management requested the creation of a joint ICMS working group to review the current ADR/ICMS program. The rationale was to provide ideas/suggestions to tailor the existing program to meet both the overall and regional needs of CBSA. With this in mind, a joint working group was created. Representation for this group came from all our regions and was made up of an equal number of union and management participants. The group met on May 17 & 18 and again from June 20 - 24, 2005 and those meetings resulted in the development of the Joint-ICMS Working Group Report. This report is now in the hands of the Joint-ICMS Steering Committee whose members are currently reviewing its recommendations. The Steering Committee will meet in September at which time it will consider the recommendations with a view to formulating proposals on ADR/ICMS updates or changes to be presented to CBSA senior management.

How will using interest-based processes (negotiation, mediation and so forth) affect my rights, particularly if they don't work?

Your rights will not be affected by your use of interest-based processes, as long as you have respected the relevant collective agreement, the timeframes and the procedures within which you must operate for the rights-based processes. The onus is on you to be aware of the policies and procedures regarding your rights-based recourse, and to seek guidance if in doubt.

When dealing with a dispute, employees and managers should consider resolving the matter by communicating with the other party using interest-based negotiation or IBN. If unable to resolve, they can request the assistance of a manager, an Alternative Dispute Resolution Advisor (ADRA), an HR Advisor or a union representative before referring the dispute to an appropriate authority for a decision.

Employees have the right to submit a complaint, grievance or a request for review in accordance with the procedures established for the type of rights-based recourse specific for the dispute. Rights-based processes, once begun, will be held in abeyance while interest-based approaches are used in an attempt to resolve. This may happen at any time throughout the rights-based processes, depending on the willingness of the parties in dispute. If an interest-based process does not allow you to resolve the conflict or dispute, then the rights-based processes remain available to you.

For more information about all the conflict resolution options available to you, contact your manager, your local ADRA, your union representative or your HR advisor.

Why does my manager need to know that I am using interest-based processes?

You are responsible to your employer for your hours of work and for the way they are used. You are also expected to take an active role in resolving issues before they become disruptive, to try to prevent disputes and to request advice and support from others to help you deal with conflict.

Your manager has a lead role in dealing with conflict in the workplace and is

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responsible for promoting interest-based approaches and providing a harassment-free workplace. Your manager may be able to advise you in dealing with a conflict situation. If you need other assistance in finding a solution to a conflict and need to take time away from your workplace to obtain that assistance, then your manager should be informed.

If an alternative resolution approach, including mediation is recommended to help you resolve the conflict, then costs may be incurred (if, for instance, the neutral third party or mediator needs to travel). In that case, a manager will need to authorize the expenditure.

If the nature of the conflict is such that you do not want to inform your manager about it, you can always obtain confidential information or assistance from your ADRA: see the website home page for the link.

What is the difference between a conflict and a dispute? ▲

A **conflict** is a dissatisfaction or a disagreement with an interaction, process, product or service in a work-related situation.

Conflicts are a common, daily occurrence between people. You may have a conflict with your co-worker during a meeting when you disagree on some issue or idea. In fact, whenever you discuss something with another person you are probably in conflict until you reach agreement.

In this context, conflict can be both positive and negative. For example, when you disagree with a procedure, bringing it up for discussion with co-workers could lead to more effective and efficient procedures.

Should you decide not to try to resolve the conflict or try to resolve it and you are unsuccessful, chances are that it will escalate into a **dispute**. A dispute is the manifestation of a conflict, and refers to disruptive or unproductive interactions and exchanges that interfere with harmonious working relationships.

A conflict becomes a dispute when communication breaks down between the parties in conflict and when emotions rise in one or both parties to the point where attempts to resolve the conflict only lead to disruptive and unproductive situations. The parties in essence become emotionally involved and they can no longer communicate effectively. At this point, it may be appropriate to bring the situation to the attention of an ADRA, a manager, an HR advisor or a union representative for assistance in resolving the dispute.

Conflict that develops into a dispute can be difficult and emotionally draining. In addition to the resources available to help with resolving the dispute, you can access the Employee Assistance Program (EAP).

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Lusk, Kathy

From: Lusk, Kathy
Sent: March 4, 2016 12:29 PM
To: Demers-Doiron, Charlotte
Cc: Patterson, Rick; Christiansen, Calvin; McCarthy, Ken; MacPhee, Jennifer
Subject: Letters
Attachments: Security Volume – Directive on CBSA Personnel Security Screening.docx; Security Volume – Standard for CBSA Personnel Security Screening.docx; Security Letters for pdf

Hello Charlotte,

Please find attached as discussed, two letters (one pdf to be printed single sided so the letters are separate).

The first letter to be presented is the Security letter from Mr. Giguere, with the attached Security Information (Security Volume – Standard for CBSA Personnel Security Screening, Security Volume – Directive on CBSA Personnel Security Screening) provided above.

The second letter, from Mr. Christiansen is to be presented afterwards.

If you have any questions please do not hesitate. I will be here and available.

Thank you,

Kathy Lusk

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Canada Border Services Agency | Government of Canada
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Security Volume – Directive on CBSA Personnel Security Screening

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1. Effective Date

1.1. This directive takes effect on January 6, 2015.

2. Application

2.1. This directive applies to:

- All individuals who will have access to Canada Border Services Agency (CBSA) information and assets; and
- All applicants to and employees (permanent, term, casual, part-time) of the CBSA, contract and private agency personnel and to individuals seconded or assigned to the CBSA, including students.

3. Context

The Government of Canada's Policy on Government Security (PGS) requires the CBSA to ensure that all individuals who will have access to government information and assets are

security screened at the appropriate level before the commencement of their duties and are treated in a fair and unbiased manner. This directive describes how the CBSA will manage Personnel Security in accordance with the PGS.

Security begins by establishing trust in interactions between government and Canadians and within government. Within government, there is a need to ensure that those having access to government information, assets and services are trustworthy, reliable and loyal. The CBSA's Personnel Security Program has been established to support these requirements.

The Personnel Security Program limits access to information and assets to those individuals with a need to know. It ensures that an individual is appropriately screened based on the information and access required for the performance of his or her job. Effective Personnel Security management enables the CBSA:

- To ensure that individuals with access to government information/assets and/or privileged access to critical systems are reliable and trustworthy;
- To ensure the individual's loyalty to Canada in order to protect itself from foreign intelligence gathering and terrorism; and
- To prevent malicious activity and unauthorized disclosure of protected and classified information or damage affected on critical systems by a disaffected individual in a position of trust.

In recognition of the CBSA's role in law enforcement, national security and public safety and the demonstrated risk exposure to incidents of corruption, fraud and criminal interference, the Agency received Treasury Board approval to implement additional Personnel Security screening tools to augment the baseline screening requirements.

4. Definitions

Specific definitions drawn from authoritative sources are included in the [Glossary of Security Terminology](#).

5. Policy Statement

5.1. Objective

The objective of this directive is to ensure that the CBSA provides the appropriate access to Government of Canada (GoC) information and assets to personnel who have been deemed trustworthy and loyal in accordance with the Policy on Government Security (PGS).

5.2. Expected Results

- Compliance with the PGS;
- Employees understand their responsibilities regarding the security of Government information and assets;

- Information, assets and services are safeguarded from compromise and employees are protected against workplace violence;
- Interoperability and information exchange with other GoC Personnel Security Departments and Agencies;
- Mechanisms and resources are in place to ensure effective and efficient management of Personnel Security at the CBSA;
- Individuals with access to Agency information and assets have integrity, are reliable, honest and trustworthy;
- The vulnerability to influence by criminal elements is reduced;
- The potential security risks to sensitive information and assets are minimized; and
- The protection of program integrity.

6. Roles and Responsibilities

6.1. President

The President of the CBSA is responsible for effectively managing security activities within the CBSA and contributing to effective government-wide security management. The President is responsible for:

- Ensuring the CBSA's compliance to the PGS and other related policy instruments and legislation;
- Approving the CBSA's Departmental Security Plan and establishing a security program for the coordination and management of overall security activities, including Personnel Security;
- Appointing a Departmental Security Officer to manage the departmental security program;
- Ensuring that managers at all levels integrate Personnel Security requirements into plans, programs, activities and services;
- Denying, suspending or revoking a Reliability Status in the case of just cause;
- Denying, suspending or revoking a Security Clearance in the case of just cause; and
- Ensuring that when significant issues arise regarding policy compliance, allegations of misconduct, suspected criminal activity, security incidents, or workplace violence, they are investigated, acted upon and reported to the appropriate authorities.

6.2. Departmental Security Officer (DSO)

The Departmental Security Officer (DSO) is responsible for the management of CBSA's Security Program and has the following responsibilities with regard to Personnel Security:

- Developing, implementing, monitoring and maintaining a Departmental Security Plan which incorporates Personnel Security;
- Ensuring a coordinated approach to all aspects of CBSA Security: Personnel Security, IM, COMSEC, Contract and Physical Security;

- Ensuring that accountabilities, delegations, reporting relationships, and roles and responsibilities of CBSA employees with security responsibilities are defined, documented and communicated to relevant persons;
- Granting a Reliability Status and Security Clearance;
- Delegating the granting of a Reliability Status and Security Clearance by the DSO;
- Giving advice and making recommendations to the President in cases of denial, suspension or revocation of a Security Clearance; and
- Where just cause exists:
 - Denying, revoking or suspending a Reliability Status and informing the manager or Director.

6.3. Personnel Security Screening Section

The Personnel Security Screening Section (PSSS) is responsible for the coordination of all functions related to the technical and operational aspects of Personnel Security, specifically:

- Ensuring that all individuals who require access to Protected/Classified information or/and assets or/and privileged access to critical systems, have been granted the required CBSA approved Security level **prior** to the start of any assignment, appointment or secondment as a Reliability status or a Security Clearance is a condition of employment at the CBSA.
 - Reliability Status is required if access to Protected (A, B or C) information is a requirement of the work duties.
 - A Secret Security Clearance is required if access to Classified information is a requirement of the work duties. It is also required when privileged access to critical systems is needed to perform work duties.
 - Top Secret clearance is required if access to Classified information is a requirement of the work duties and there is a need to know to access information classified as Top Secret.
- Maintaining a functional or direct reporting relationship with the DSO to ensure departmental security activities are coordinated and integrated;
- Selecting, implementing and maintaining security controls related to the Personnel Security;
- Determining the security requirements of each position based on the sensitivity of the information, assets and privileged access to critical systems to which the incumbent has access;
- Advising managers and/or Human Resources (HR) of the status of the security assessment;
- Processing requests for personnel security screenings, including criminal record name checks, credit checks, verification of databases with Customs and Immigration information, Law Enforcement Record Checks, conducting integrity interviews, and conducting loyalty assessments ;
- Advising HR, Regional Security or HQ Security in writing of the candidate's personnel security screening results;

- Ensuring that all employees / contractors have received the official briefing by the employee's manager and have signed the Security Screening Certificate and Briefing Form;
- Maintaining employee personnel security screening files;
- Ensuring that Reliability Status and Security Clearances are updated, in accordance with the Security requirements of the position. The Security Officer will update:
 - a Reliability Status: every 10 years
 - a Secret clearance: every 10 years
 - a Top Secret clearance: every 5 years
- Conducting an update to the security screening of any employee who has been away from the workplace for over 1 year; and
- Performing reviews of screenings for cause and conducting investigations when required.

6.4. Regional/Headquarters Security Manager

Regional and Headquarters Security Managers are responsible for:

- Providing advice and guidance regarding the security screening process;
- Reviewing the completed personnel security screening forms for accuracy prior to forwarding it to the PSSS; and
- Ensuring that integrity interviews are conducted when required by PSSS.

6.5. Human Resources

Human Resources are responsible for:

- Verifying the following information for new employees:
 - Personal data (i.e. date of birth, address)
 - Education / professional qualifications
 - Employment history
 - Personal Character
- Initiating the Personnel Security Screening process; and
- Ensuring that no employee is hired/appointed/acting in a position without being security screened and granted his or her required CBSA Reliability Status or Security Clearance by the DSO.

6.6. CBSA Managers

Managers are responsible for:

Managers are responsible for ensuring an appropriate level of security for their programs and services. In designing programs and services, managers will work with departmental security specialists to effectively manage risk. Managers will be supported and assisted by the PSSS in order to fulfill the following responsibilities:

- Ensuring that security requirements are integrated into business planning, programs, services and other management activities;
- Ensuring employees apply effective security practices;
- Identifying the sensitivity of the information, assets and privileged access to critical systems for each position of their unit and informing the CBSA PSSS to obtain the proper Security requirement for the position;
- Ensuring that no individual is hired/appointed/acting or commences any work in a position without being screened and granted his or her required CBSA approved Security Level by the PSSS, including acting assignments;
- Controlling access to protected/classified information and assets to persons who have acquired the proper Security Clearance and who have a “need-to-know”; need-to-know means the need for someone to access and know information in order to perform his or her duties.
- When contracts are required, identifying any security requirements and ensuring that no temporary help, contractor or consultant is hired or commences any work without being screened and has been granted the appropriate CBSA approved security level as required in the contract or agreement;
- Reporting adverse information to the Security and Professional Standards Directorate (SPSD);
- Ensuring that a Security Briefing is provided to every employee upon hire; and
- Ensuring that employees take the Online Security Awareness Module within two weeks of joining the CBSA and repeating the module every two years thereafter.

6.7. Employees

Employees are responsible for:

- Safeguarding information and assets under their control whether working on CBSA premises or off-site;
- Applying security controls related to their area of responsibility to ensure that security requirements are part of their day-to-day processes, practices and program delivery;
- Reporting security incidents through the appropriate channels; and
- Informing their manager of any issues affecting their Reliability Status or Security Clearance:
 - Arrest or Criminal conviction;
 - Bankruptcy;
 - Single/cohabitating/marriage/divorce; and/or
 - If approached by someone criminal, a representative of a foreign government, a fringe interest group or a foreign national who is seeking information about CBSA or the activities of CBSA, which would compromise the national interest, or the integrity of the Agency.

7. Consequences

CBSA employees are held to high standards based on the nature of the work they do. There is a requirement for CBSA employees to have honesty, integrity and trustworthiness – the HIT

factor. CBSA employees who are found to have breached the HIT factor, CBSA Code of Conduct, the Policy on Government Security, the Values and Ethics Code or any other applicable CBSA or Government of Canada policies, standards or legislation, will be subject to disciplinary measures based on the seriousness of the misconduct and in accordance with the CBSA Discipline Policy. In some cases this may mean a review and possibly a revocation of the CBSA Reliability Status.

8. References

This directive is issued under section 7 of the Financial Administration Act and should be read in conjunction with:

- The CBSA PerSec Standard
- Standard Operating Procedures for Security Requirement Checklist (SRCL)
- Policy on Government Security
- Directive on Identity Management
- Directive on Departmental Security Management
- Standard on Security Screening
- Operational Security Standard: Management of Information Technology Security (MITS)
- CBSA Code of Conduct
- Values and Ethics Code for the Public Sector
- Criminal Code of Canada

9. Enquiries

For more information, please contact: Security and Professional Standards Directorate

Date modified:

2015-03-25

s 247.1 Definition of "sexual harassment" Canada Labour Code

Currency

247.1 Definition of "sexual harassment"

In this Division, "**sexual harassment**" means any conduct, comment, gesture or contact of a **sexual** nature

- (a) that is likely to cause offence or humiliation to any employee; or
- (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a **sexual** nature on employment or on any opportunity for training or promotion.

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Treasury Board of Canada Secretariat (<http://www.tbs-sct.gc.ca/index-eng.asp>)

Directive on the Harassment Complaint Process

1 Effective date

1.1 This directive takes effect on October 1st, 2012.

1.2 It is issued in conjunction with the Treasury Board *Policy on Harassment Prevention and Resolution* ([/pol/doc-eng.aspx?id=26041](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041)) dated October 1st, 2012 and both instruments replace the 2001 *Policy on the Prevention and Resolution of Harassment in the Workplace*.

2 Application

2.1 This directive applies to the core public administration which includes organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>) unless excluded by specific acts, regulations or orders in council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board of Canada Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this directive within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The harassment complaint process established under this directive is available to employees of organizations described in 2.1. For individuals who are not employees as defined in *Appendix A*, managers must address any allegation of harassment from these individuals in accordance with the spirit of this directive.

4 In circumstances where an employee files a harassment complaint against an individual who is not an employee as defined in Appendix A, managers must apply the complaint process as established in this directive to the extent possible.

3 Context

3.1 The prevention and resolution of harassment in the workplace is an essential component in the effective people management of an organization. The goal of Treasury Board as the employer is to maintain a productive, healthy and respectful workplace where positive working relationships and practices are promoted and where everyone is guided by the values of the public sector which includes treating each other with respect and fairness.

In keeping with the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041)*, the Treasury Board is committed to having a harassment-free workplace. In part, this can be achieved by ensuring that every organization remains sensitive to the potential for harassment, or perceptions of harassment in the workplace, and actively managing any such situations whenever and wherever they arise. Requiring organizations across the core public administration to implement measures for preventing and managing workplace harassment will help the employer reduce the effects of stressful work situations on employees, and improve their overall wellbeing and productivity, which in turn will lead to better results for Canadians.

3.2 Harassment is serious and needs to be addressed promptly, with sensitivity, competence and discretion. The primary goal is to resolve allegations of harassment in the most informal way feasible, with the least disruption possible for the parties involved and the work environment. While the seriousness of harassment allegations calls for access to a careful and rigorous process from the outset, it is consistent with such a process that many cases may, upon closer exploration and with the consent of all parties, be effectively dealt with through informal resolution processes.

3.3 This directive flows from the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041)* and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of this directive.

3.4 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace, and for the prompt resolution of related complaints. Treasury Board provides broad direction to deputy heads while the latter are responsible for implementation.

3.5 This directive is issued pursuant to section 7 and subsection 11.1 of the *Financial*

Administration Act (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>).

3.6 This directive is to be read in conjunction with the following:

- *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041>)
- *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>), including the *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace
- *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>)
- The principles listed in the *Policy Framework for People Management* (</pol/doc-eng.aspx?id=19134>)

In addition, the guidelines contained in the *Guide on Applying the Harassment Resolution Process* (</gui/gahrp-gaprh-eng.asp>) should be read in conjunction with this directive as they are fundamental in interpreting and applying efficiently the harassment complaint process.

4 Definitions

For definitions to be used in the interpretation of this directive, refer to Appendix A.

5 Directive Statement

5.1 Objective

The objective of this directive is to describe the minimum requirements of the harassment complaint process and set out expected results in order to ensure the timely and efficient resolution of complaints.

5.2 Expected results

The expected results of this directive are:

5.2.1 Complaints of harassment are handled fairly, confidentially¹, effectively and in a timely manner.

5.2.2 Steps are taken to restore the well-being of the workplace.

5 Requirements

6.1 The designated officials are responsible for the following:

6.1.1 Ensuring that the harassment complaint process is carried out promptly; respects the principles of procedural fairness towards the complainant, the respondent and all other parties involved; and that it contains the following five steps:

Step 1 - Acknowledging receipt of the complaint while ensuring that:

- employees understand that if a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this directive will not proceed further and the file will be closed.
- the written complaint is submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances); and
- the parties are made aware of the options for informal resolution from the outset and throughout the process.

Note: The *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace found in the *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>) should be considered in cases of incidents of violence including alleged threats. Assaults, including sexual assault and criminal harassment are subject to the *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>) and such cases should be promptly referred to the appropriate authorities.

Step 2 - Reviewing the complaint to determine whether the allegation(s) meets the definition of harassment as described in this directive (see [Appendix A](#)). The respondent is notified of the complaint whether or not the complaint is admissible.

Step 3 - Exploring options for resolving the complaint while ensuring that consideration is given to informal resolution processes. Should there be an investigation², the person conducting the investigation is appropriately qualified³ and applies the principles of procedural fairness.

Step 4 - Rendering a decision and notifying in writing the parties involved as to whether or not the allegations were founded.

Step 5 - Restoring the well-being of the workplace while ensuring that:

- the work unit manager in consultation with the Informal Conflict Resolution practitioners and other relevant organizational resources addresses the needs of the parties concerned and the work unit throughout the complaint process as well as any detrimental impacts resulting from the incidences of harassment; and
- the work unit manager takes timely corrective and/or disciplinary measures, if warranted, including addressing reprisal or risk of reprisal.

6.1.2 Ensuring that steps 1, 2, 3 and 4 are completed in a timely fashion, normally within 12 months unless there are extenuating circumstances, and step 5 is initiated within the same time frame.

For additional information on the application of the steps in the harassment complaint process, consult the [Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)](#).

6.2 Monitoring and reporting requirements

6.2.1 Within Organizations

Consistent with the requirements in section 6.1, the deputy head is responsible for monitoring the performance of the organization with respect to the application and administration of this directive.

6.2.2 By Organizations

The Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer)) is responsible for assessing organizational performance with respect to the administration of and compliance with the requirements herein. The results organizations are expected to achieve may be assessed by data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

As deemed appropriate by TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer), the deputy head may be required to provide information considered necessary for assessing compliance with this directive. For example, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

2.3 Government Wide

TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) will review the directive and its effectiveness at the five-year mark of implementation.

7 Consequences

7.1 The deputy head is responsible for taking corrective measures when significant issues arise regarding compliance with this directive. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads temporarily withdraw or suspend delegated authorities to his/her staff, undertake corrective actions or impose measures to restore compliance with this directive.

7.2 For a range of consequences of non-compliance, refer to the *Framework for the Management of Compliance* (</pol/doc-eng.aspx?id=17151>).

8 Roles and Responsibilities of Government Organizations

8.1 In addition to its monitoring role, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) assists the designated officials with the implementation and application of this directive through the provision of advice and the issuance of related administrative guidelines and tools.

9 References

9.1 Other Relevant Legislation/Regulations:

- *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>)
- *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html>)
- *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>)
- *Official Languages Act* (<http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html>)
- *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>)

9.2 Related policy instruments/publications

- [Values and Ethics Code for the Public Sector \(/pol/doc-eng.aspx?id=25049\)](/pol/doc-eng.aspx?id=25049)
- [Framework for the Management of Compliance \(/pol/doc-eng.aspx?id=17151\)](/pol/doc-eng.aspx?id=17151)
- [Policy on Official Languages for Human Resources Management \(/pol/doc-eng.aspx?id=12521\)](/pol/doc-eng.aspx?id=12521)
- [Policy on Language of Work \(/pol/doc-eng.aspx?id=12520\)](/pol/doc-eng.aspx?id=12520)

Guides/Tools:

- [Getting to know Informal Conflict Management Systems \(ICMS\) better \(/gui/confplus-eng.asp\)](/gui/confplus-eng.asp)
- [A guide to the key elements of an ICMS \(Informal Conflict Management System\) \(/gui/confgui-eng.asp\)](/gui/confgui-eng.asp)
- [Is it Harassment? A Tool to Guide Employees \(/gui/mibh-sjh-eng.asp\)](/gui/mibh-sjh-eng.asp)
- [Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)](/gui/gahrp-gaprh-eng.asp)
- [Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process \(/gui/hig02-eng.asp\)](/gui/hig02-eng.asp)
- [Preventing and Resolving Harassment in the Workplace: a Guide for managers \(/gui/hars-eng.asp\)](/gui/hars-eng.asp)
- [Restoring the Workplace Following a Harassment Complaint: A Manager's Guide \(/gui/rwfhc02-eng.asp\)](/gui/rwfhc02-eng.asp)
- [Sample of a Harassment Complaint Form \(/tbsf-fsct/hcf-fph-eng.asp\)](/tbsf-fsct/hcf-fph-eng.asp)

10 Enquiries

For interpretation of this directive, departmental officials should contact [TBS \(Treasury Board of Canada Secretariat\) Public Enquiries \(/tbs-sct/cmn/contact-eng.asp#enquiries\)](/tbs-sct/cmn/contact-eng.asp#enquiries). Employees should direct enquiries about this directive to their responsible departmental officials.

Appendix A - Definitions

Complaint (*plainte*)

is an allegation of harassment communicated verbally or submitted in writing. For the harassment complaint process, a written complaint must be submitted.

Designated Official (*responsable désigné*)

Person designated by the deputy head to be responsible for the overall application of the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. The deputy head may designate more than one official in his organization.

Employee (*employé*)

for the purpose of this directive, employee refers to those employed as indeterminate employees, part-time employees, term employees, seasonal employees, casual workers, students and part-time workers in organizations defined in section 2.1.

Harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Informal Resolution Process (*processus de résolution informel*)

a confidential, voluntary and collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Restoration of the workplace (*rétablissement du milieu de travail*)

the establishment or re-establishment of harmonious working relationships amongst individuals and within the team, group or unit, following a harassment complaint.

Footnotes

¹ All parties directly involved in the process are expected to limit the discussion of all aspects of the complaint to those who need to know.

An investigation may not be necessary if the designated official is satisfied that he has all the facts based on his inquiries and that the parties have been heard in accordance with procedural fairness.

³ Investigators must meet the Competency Profile for the harassment investigators ([/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp](http://pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp)).

Date Modified:

2013-06-26

<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26040§ion=HTML>

2015-08-12

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[Treasury Board of Canada Secretariat \(/index-eng.asp\)](#)[Home](#) / [Policy and Oversight](#) / [Treasury Board Policy Suite](#)/ [Policy on Harassment Prevention and Resolution](#)

Policy on Harassment Prevention and Resolution

[Related Instruments \(/pol/doc-eng.aspx?id=26041§ion=related\)](#)

Supporting Tools

[Web sites \(doc-eng.aspx?id=26176\)](#)[Archives \(/pol/doc-eng.aspx?id=26041§ion=archives\)](#)

Alternate Formats

[Complete Text \(/pol/doc-eng.aspx?id=26041§ion=HTML\)](#)[XML \(/pol/doc-eng.aspx?id=26041§ion=XML\)](#)

Expand All

Collapse All

▼ 1 Effective Date



1.1 This policy takes effect on October 1st, 2012.

1.2 This policy replaces the following:

- *Policy on the Prevention and Resolution of Harassment in the Workplace (2001)*

▼ 2 Application

<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>

2015-08-12

2.1 This policy applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>) unless excluded by specific acts, regulations or Orders in Council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The scope of this policy applies to employee behaviour in the workplace or at any location or any event related to work, including while:

- On travel status,
- At a conference where the attendance is sponsored by the employer,
- At employer sponsored training activities/information sessions, and
- At employer sponsored events, including social events.

▼ 3 Context



3.1 The values of the public sector uphold the practice of respect, fairness and courtesy and the importance of demonstrating human dignity within professional relationships. These are also core components of a fair, supportive and ethical workplace as envisaged in the *Policy Framework for People Management* (</pol/doc-eng.aspx?id=19134>) and the *Workplace Policy* (under development). Success in the practice of these values will foster a safe and healthy workplace free from harassment. When allowed to persist, harassment has adverse effects on the mental health and engagement of employees and on the quality of their work. In a complex and demanding work environment that brings together diverse people and in which collaboration is essential to success, misunderstandings and interpersonal conflicts are inevitable. The organizational culture has an influence

on how colleagues interact with one another, and should therefore promote the awareness and practice of good communication and effective interpersonal skills. The ongoing effort to demonstrate respect is everyone's personal responsibility.

Interactions between supervisors and subordinates may be especially sensitive because of the power differential they embody. Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.

Inevitably, there will be occasional instances of conduct that are incompatible with public sector values, and where informal requests for change in behaviours do not succeed. For such situations, a more formal process remains necessary. This policy and the associated *Directive on the Harassment Complaint Process* ([/pol/doc-eng.aspx?id=26040](http://pol/doc-eng.aspx?id=26040)) should be read in the spirit that early, informal, and less bureaucratic approaches are to be sought, even once a formal process has been engaged.

3.2 This policy stresses the responsibility of deputy heads to protect employees from harassment beyond the requirement of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>), which forbids harassment on prohibited grounds of discrimination, by requiring deputy heads to act on all forms of harassment. It also responds to the *Canada Labour Code Part II* (http://www.hrsdc.gc.ca/eng/labour/health_safety/overview.shtml) and the *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) Part XX-Violence Prevention in the Work Place, that require every employer to provide employees with a safe, healthy, and violence-free work environment and dedicate sufficient attention, resources and time to address factors that contribute to workplace violence including bullying, teasing and other aggressive or abusive behaviours. Harassment is a factor that can contribute to the risk of workplace violence and must be promptly and adequately addressed.

3.3 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace and for the prompt resolution of related complaints. This policy provides deputy heads with strategic direction to prevent and manage harassment in the context of creating wide-ranging support for a safe and respectful workplace. It intends to give enough flexibility for tailoring mechanisms and practices to the distinctive

operational needs and culture of each organization. Minimum requirements and expectations of all organizations are stipulated in this policy and the associated directive.

3.4 This policy is issued pursuant to Sections 7 and 11.1 of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>).

3.5 This policy should be read in conjunction with the following:

- *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>) , including the *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace
- *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>)
- *Values and Ethics Code for the Public Sector* (</pol/doc-eng.aspx?id=25049>)
- The principles listed in the *Policy Framework for People Management* (</pol/doc-eng.aspx?id=19134>)

3.6 Additional mandatory requirements are set out in the:

- *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040>)

▼ 4 Definitions

For definitions to be used in the interpretation of this policy refer to Appendix A.

▼ 5 Policy Statement

▼ 5.1 Objective

The objective of this policy is to provide deputy heads with strategic directions and set out expected results to foster a respectful workplace and address potential situations of harassment.

▼ 5.2 Expected results

The expected results of this policy are that:

5.2.1 Employees have been given ample opportunity to learn about harassment prevention strategies, the harassment complaint process and their right to a harassment free workplace and there are effective incentives for employees and managers to demonstrate a high level of respect for people.

5.2.2 Employees have access to an effective, timely and confidential¹ harassment resolution process without fear of reprisal, either through informal resolution or a formal harassment complaint process or both;

5.2.3 Employees perceive their work environment as generally fair and respectful.

5.2.4 There is an enhanced collaborative union-management approach on harassment.

▼ 6 Policy Requirements

▼ 6.1 Deputy heads are responsible for:

6.1.1 Ensuring that preventive activities are in place to foster a harassment-free workplace. These include informing employees about the employer's commitment to fostering a harassment-free workplace and ensuring that results are achieved in a manner that respects employees. Other possible preventive activities are suggested in the Definitions Section- Appendix A.

6.1.2 Optimizing the use of the informal resolution processes and ensuring that those who are involved in managing and resolving harassment complaints have the required competencies, including informal conflict resolution skills.

6.1.3 Regularly consulting with bargaining agents, informal conflict resolution practitioners and other stakeholders on the application of the Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040).

6.1.4 Designating an official or officials for the application of the *Policy on Harassment Prevention and Resolution* and the Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040).

▼ 6.2 Monitoring and reporting requirements

6.2.1 Within organizations

Deputy heads are responsible for monitoring compliance with this policy and its associated directive within their organizations.

6.2.2 By organizations

The achievement of expected results by deputy heads will be assessed by Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer)) through data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

Organizations may be required to provide additional information considered necessary for assessing compliance. For example, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

6.2.3 Government-wide

TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) is responsible for reviewing this policy and its effectiveness at the five-year mark of implementation.

▼ 7 Consequences



7.1 Deputy heads are responsible for taking corrective measures when significant issues arise regarding policy compliance. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads take corrective actions and report back on the outcome. Non-compliance with this policy or failure to take actions requested by the Chief Human Resources Officer may result in Treasury Board taking corrective actions.

7.2 For a range of consequences of non-compliance, please refer to the *Framework for the Management of Compliance* ([/pol/doc-eng.aspx?id=17151](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=17151)).

▼ 8 Roles and responsibilities of government organizations



8.1 In addition to its monitoring role, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) assists the designated officials with the implementation and application of this policy through the provision of advice and the issuance of related administrative guidelines and tools.

▼ 9 References

▼ 9.1 Other relevant legislations/regulations

- *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html>)
- *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>)
- *Public Service Employment Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.01/>)
- *Official Languages Act* (<http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html>)
- *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>)

▼ 9.2 Related policy instruments/publications

- *Foundation Framework for Treasury Board Policies* (</pol/doc-eng.aspx?id=13616>)
- *Framework for the Management of Compliance* (</pol/doc-eng.aspx?id=17151>)
- *Policy on Official Languages for Human Resources Management* (</pol/doc-eng.aspx?id=12521>)
- *Policy on Language of Work* (</pol/doc-eng.aspx?id=12520>)

▼ Guides

- *Getting to know Informal Conflict Management Systems (ICMS) better* (</gui/conflplus-eng.asp>)
- *A guide to the key elements of an ICMS (Informal Conflict Management System)* (</gui/conflgui-eng.asp>)
- *Preventing and Resolving Harassment in the Workplace: a Guide for managers* (</gui/hars-eng.asp>)

- [*Is it Harassment? A Tool to Guide Employees \(/gui/mibh-sjh-eng.asp\)*](#)
- [*Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)*](#)
- [*Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process \(/gui/hig02-eng.asp\)*](#)
- [*Restoring the Workplace Following a Harassment Complaint: A Manager's Guide \(/gui/rwfhc02-eng.asp\)*](#)

▼ 10 Enquiries



For interpretation of this policy, departmental officials should contact TBS (Treasury Board of Canada Secretariat) Public Enquiries ([/contact/contact-eng.aspx](#)). Employees should direct enquiries about this policy to their responsible departmental officials.

▼ Appendix A - Definitions



Harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the [*Canadian Human Rights Act*](http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Harassment prevention activities (*activités de prévention du harcèlement*)

activities which aim to reduce the potential for harassment, or perceptions of harassment in the workplace. These may include:

- communicating to all employees the informal and formal processes available to them to resolve issues related to harassment;
- communicating to all employees the departmental resources available such as a harassment prevention advisors, union representatives, Employee Assistance Program counsellors, and informal conflict resolution practitioners;
- informing employees about the employer's commitment to a respectful workplace;
- delivering workshops on harassment prevention, anger management, meaningful conversations, collaborative problem solving, etc.;
- developing communication tools;
- identifying risk factors;
- managing conflicts promptly;
- promoting a culture of self-awareness, collaboration and respect; for example, putting in place 360-degree feedback mechanisms or comparable processes to ensure that results are achieved in a manner that respects employees.
- providing appropriate training and tools to those who are involved in managing and resolving harassment complaints;
- staying vigilant to the workplace climate.

Informal Resolution Process (*processus de résolution informel*)

a confidential and voluntary collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Footnotes

¹All parties directly involved in the process are expected to limit the discussions of all aspects pertaining to the complaint to those who need to know.

[Expand All](#)[Collapse All](#)

Date Modified:

2013-06-26

<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>

2015-08-12



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→ [Healthy workplace \(http://www.canada.ca/en/gov/publicservice/healthy/\)](http://www.canada.ca/en/gov/publicservice/healthy/)

→ [Prevention and resolution of harassment \(/psm-fpdm/healthy-sain/prh/index-eng.asp\)](http://psm-fpdm/healthy-sain/prh/index-eng.asp)

Guide on Applying the Harassment Resolution Process

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Who is this guide for?

<http://www.tbs-sct.gc.ca/psm-fpdm/healthy-sain/prh/gahrp-gaprh-eng.asp>

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This guide is primarily for those who are involved in the resolution of harassment related allegations such as designated officials, the person responsible for managing the complaint process, harassment prevention advisors, labour relation advisors and informal conflict resolution practitioners. This guide may also be useful for employees and managers who share a responsibility in preventing and resolving harassment in the workplace.

Purpose of the guide

The objective is to provide contextual information and best practices related to the harassment resolution process, including the use of the informal resolution processes and the application of the formal harassment complaint process. These guidelines are intended to allow for flexibility in the tailoring of mechanisms and practices to the operational needs and culture of each organization while being mindful of the need to carry out the harassment complaint process in accordance with procedural fairness and the step-by-step process as outlined in the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#).

The Harassment Resolution Processes

The goal of the informal and formal processes is to resolve situations of alleged harassment as quickly as possible, in a fair, constructive and respectful manner. In many instances, using informal processes (also called collaborative problem-solving approaches), such as dialogue (facilitated or not) or mediation, offers the possibility of resolving many work related issues that may be harassment or perceived as harassment in a satisfactory manner, acceptable to both parties. Such an approach has the advantage of addressing the parties' needs, concerns and other interests rather than focusing on who is right and who is wrong. It empowers the parties to focus on solutions to meet their needs and often leads to the re-establishment of respectful working relationships.

The formal resolution process as outlined in the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#) requires that a complaint be filed in writing and calls upon an impartial person to determine whether or not a person's rights have been infringed upon. This approach is sometimes necessary to protect an individual's rights, to shed light on the alleged incidents and to determine appropriate corrective and or disciplinary measures.

though access to a formal resolution process is valuable to address allegations of harassment, it is not always the most efficient way to resolve issues. The formal resolution process is inherently adversarial (determining who is right and wrong rather than focusing on restoring relationships) and as a result, it is difficult to reconcile such a process with the ultimate goal of restoring the workplace relationships once a decision has been rendered. For this reason, informal resolution processes should be encouraged whenever appropriate.

Informal Resolution Process

Whether or not a written complaint has been filed, an employee who experiences a workplace situation as harassment should be encouraged, if appropriate, ¹ to make the situation known to the other person as constructively as possible in an attempt to resolve the situation. This could include the assistance of a resource person such as a coach, facilitator, advisor, mediator, manager/supervisor or union representative, to help prepare the employee for a meaningful conversation. The words chosen and the tone used to express issues and concerns, and the intent behind messages have an impact on how the recipient receives the information and responds.

If the problem is not resolved, or if one of the parties feels he or she cannot speak directly with the other person, other options such as a facilitated dialogue or mediation can be explored. Informal resolution processes can be effective in resolving issues related to harassment but require the willingness of the parties to participate. They are voluntary processes and cannot be forced on anyone. Frequently, however, a party's hesitation in agreeing to use them stems from the unknown. These processes may be unfamiliar to them and they may be uncertain that they will get "satisfaction" from the process. It is useful to the parties if they are given an explanation as to why a certain approach may be seen as the most appropriate for the situation and how both parties can benefit by using a collaborative problem-solving approach. Empathic listening is also helpful to get the parties' cooperation for giving consideration to collaborative problem-solving approaches. It allows for an authentic understanding of what they feel and need and helps bring to surface relevant information needed to assist them in resolving the situation. When we listen deeply for what people feel and need, we provide them with an opportunity to be "heard" and they ultimately become empowered and more willing to create solutions for themselves based on mutual respect and consensus.

If it appears that the time required to follow the informal process will be more than the **twelve month** time limit prescribed for the filing of a complaint under the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>), the person

as an option to proceed with the filing of a written complaint and request that it be held in abeyance while continuing to pursue the informal process route. This will protect his or her right to later avail him or herself of the formal process, if needed.

If the issue cannot be resolved informally, or if the parties at any point opt out of the informal process and want to address the issue in a formal way, the complainant may within the applicable time limits:

- file a written complaint with the person responsible for managing complaints of harassment under the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#) (provided a grievance has not been filed on the same issue);
- file a grievance;
- file a complaint with the [Canadian Human Rights Commission \(http://www.chrc-ccdp.ca/default-eng.aspx\)](http://www.chrc-ccdp.ca/default-eng.aspx) if an allegation of harassment is based on one of the grounds of discrimination prohibited under the [Canadian Human Rights Act \(http://laws-lois.justice.gc.ca/eng/acts/h-6/\)](http://laws-lois.justice.gc.ca/eng/acts/h-6/);

The closure of the informal process is usually documented in writing by the Informal Conflict Resolution practitioner and constitutes a statement as to whether or not the process was successful in whole or in part, recognizing that any agreement between the parties will remain confidential. However, some information may be communicated to individuals in order to help implement the agreement. The agreement does not set a legal precedent and cannot be used in similar cases.

The responsible manager and the parties involved implement any agreed upon restorative and/or corrective measures in a timely manner.

Regardless of the outcome of the informal process, further action may be needed to ensure that positive and respectful working relationships are restored.

- For more information on restoring the wellbeing of the workplace, please refer to [Restoring the Workplace Following a Harassment Complaint: A Manager's Guide \(rwfhc-eng.asp\)](#).
- For more information on the informal resolution processes, please consult with your departmental Informal Conflict Resolution contact person. You may also refer to [Getting to know Informal Conflict Management Systems better \(/psm-fpfm/healthy-sain/icms-sgic/confplus-eng.asp\)](#) and [A guide to the key elements of an ICMS in the core public administration \(/psm-fpfm/healthy-sain/icms-sgic/confgui-eng.asp\)](#).

The Harassment Complaint Process: a Model for Applying the Steps

The procedural information provided in this section can be tailored to the distinctive operational needs and culture of each organization as long as the required steps under the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>) and the principles of procedural fairness toward the complainant, the respondent and all parties involved are respected at all times. For more information on how to achieve procedural fairness within the context of a harassment complaint process, please consult your organization's Legal services or Labour relations advisors.

As per the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>), designated officials are responsible for ensuring that the harassment complaint process is carried out promptly and respects the principles of procedural fairness towards the complainant, the respondent and all other parties involved. Steps 1 to 4 in the formal process are to be completed without delay, within twelve months, and step 5 initiated within the same time frame.

Step 1 – Acknowledging receipt of the complaint

The complainant submits a harassment complaint in writing within one year of the last alleged incident to the designated official or any other person chosen by the organization with the required competencies to manage complaints of harassment. The complaint can be filed using a harassment complaint form or should at least include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a detailed description of the incident(s); and, if applicable, the names of witnesses. The onus is on the complainant to provide sufficient information, and be as precise and concise as possible.

Upon receipt of the complaint, the person responsible for managing the complaint process notifies the complainant in writing acknowledging receipt.

If the complaint is incomplete (following clarification) or has not been filed within twelve months of the last incident of the alleged harassment (unless there are extenuating circumstances), or if a grievance has already been filed on the same issue, then the complaint does not proceed further and the complainant is notified.

If a complaint is rejected, the alleged issues should still be addressed by exploring, with the parties and perhaps with the manager concerned, the nature of the issues, and by suggesting possible ways to resolve the situation.

Consideration

Twelve-month time limit

The twelve-month time limit to file a complaint is calculated from the date of occurrence of the **last repeated incident** or from the date of the **single severe incident**. Once the complainant can demonstrate that an incident occurred less than twelve months prior to the filing of the complaint, the allegations can go back further in time to describe behaviours or events if they are directly related to the complaint. This is especially necessary in cases where the complainant intends to demonstrate a pattern of events. The investigation can look into these behaviours or events, subject to proper recollections by witnesses and parties involved, as well as availability of any documentary evidence.

Extenuating circumstances

Some consideration should also be given to extenuating circumstances where a complaint may otherwise have been deemed to be filed outside of the time limit. The person responsible for managing the complaint process will make a determination based on the extenuating circumstances to accept the complaint or not. Examples of extenuating circumstances may include:

- Illness
- Circumstances outside the control of the complainant (e.g. administrative delays or administrative error)
- Use of informal conflict resolution

Step 2 – Reviewing the complaint

Once the complaint has been acknowledged, the person responsible for managing the complaint process proceeds with the review of the complaint to determine whether or not the allegations satisfy the definition of harassment (see definition found in Annex A of the [*Directive on the Harassment Complaint Process* \(/pol/doc-eng.aspx?id=26040§ion=text\)](#) and examples provided in [Annex A](#) and [Annex B](#) of this document), and if necessary, seeks additional information from the complainant. The person responsible for managing the complaint process should be satisfied that the allegations and information provided, assuming they are true, satisfy the definition of harassment.

Complaints that do not meet the definition of harassment

the person responsible for managing the complaint process determines that the allegations are frivolous or do not satisfy the definition of harassment, he or she informs the complainant that the complaint can not be accepted and provides the reasons for his decision.

In order to respect the principles of procedural fairness, the respondent is notified that a complaint was received, is provided with the allegations as they relate to him or her and the reasons why the complaint was not accepted. If the respondent requires a copy of the complaint, he or she has a right to obtain it.

If appropriate, the parties' managers can be made aware of the situation and are provided with the information on a need to know basis only. The person responsible for managing the complaint process may redirect the complainant to the appropriate avenue of recourse such as referring the person(s) to an Informal Conflict Resolution practitioner or suggest other means of resolving the issue. Many behaviours that do not meet the definition of harassment may still undermine wellness and excellence at work.

Consideration

Frivolous complaint

A frivolous complaint can be defined, according to the Shorter Oxford English Dictionary, as one "of little or no weight or importance" ... characterized by lack of seriousness;" or "manifestly futile". The frivolous complaint does not require an investigation to come to the evident conclusion that it is frivolous. The complaint should not proceed any further when, from a simple initial review, it is evident that it will not be possible to substantiate it because the complainant provided no specific allegations or information surrounding the allegations and, upon request, does not provide the necessary information to initiate a proper investigation of precise behaviours, acts, events or displays.

Vexatious complaint or one made in bad faith

A vexatious complaint, or one made in bad faith, is about intent and may only be determined through an investigation. This investigation would seek to determine if either the complaint was

- made intentionally for the purpose of vexing and annoying or embarrassing a person or
- the complaint was not calculated to lead to any practical result; or
- there is evidence of bad faith on the part of the complainant indicating an intention to mislead or if there is the presence of ill-will.

Complaints that meet the definition of harassment

If the complaint meets the definition of harassment, the person responsible for managing the complaint process informs the complainant in writing, that the complaint is deemed admissible. He or she also informs the respondent in writing that a complaint has been received. The respondent is provided with a copy of the allegations and is given an opportunity to respond to the allegations in writing. The parties' managers are made aware of the situation, if appropriate, and are provided with the information on a need to know basis so that they can support the parties, manage the impact on the team and keep operations running smoothly.

Consideration

Elements of the definition

For a complaint to be deemed admissible, the different elements of the definition should be present:

- The respondent displayed a potentially improper and offensive conduct;
- The behaviour was directed at the complainant;
- The complainant was offended or harmed;
- The respondent knew or reasonably ought to have known that his or her behaviour would cause offence or harm;
- The behaviour occurred in the workplace or at any location or any event related to work (as per the policy scope in the Application section of the *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041>)).

Repetitious behaviour versus single event

It is important to consider the severity and impropriety of the behaviour (act, comment or display) in the circumstances and context of each situation. Essentially, the definition of harassment means that more than one act or event need to be present in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, frustrate or provoke a reaction from that person. It is a behaviour that with persistence, pressures, frightens, intimidates or

incapacitates another person. Each behaviour, viewed individually, may seem inoffensive, however, it is the synergy and repetitive characteristic of the behaviours that produce harmful effects.

Please note that one single incident can constitute harassment when it is demonstrated that it is severe and has an important and lasting impact on the complainant.

Intention

In order to conclude that harassment occurred, the intent of the respondent to cause offence or harm by his/her acts, comments or displays does not need to be demonstrated; it is the impact on the other person that is taken into account. However, if this intent was present and can be demonstrated, it will be a factor in the determination of the corrective or disciplinary measures.

Reasonableness

To determine if a person ought to have reasonably known that the behaviour was improper, we must ask what a reasonable person, well informed of all the circumstances and finding himself or herself in the same situation as that of the complainant, would conclude. The behaviour in question is not only assessed by the impact or effect on the person, but it is also assessed against a reasonably objective standard. Did the behaviour exceed the reasonable and usual limits of interaction in the workplace? Would a reasonable person be offended or harmed by this conduct?

Sexual Harassment

In the case of alleged sexual harassment it is also important to note that a single incident may be viewed to be more significant in circumstances when the parties' relationship at work is one where the respondent has influence or power over the complainant with regard to career advancement, performance review, work assignment and when the incident(s) leads to adverse job related consequences for the complainant.

Please note that incidents of violence including alleged threats should be handled through the *Canada Occupational Health and Safety Regulations* – Part XX dealing with Violence Prevention in the Workplace found in the *Canada Labour Code*. Assaults, including sexual assault and criminal harassment are subject to the *Criminal Code* and such cases should be promptly referred to the appropriate authorities.

Step 3 – Exploring options

The person responsible for managing the complaint process determines what efforts have already been made to resolve the problem and identifies with the parties the various avenues of resolution available. If appropriate, the parties' manager may be involved in order to assist the parties in resolving the problem.

Informal resolution processes

If appropriate, the parties should be reminded of the options for informal resolution throughout the formal process. At any time, should the parties decide to resolve informally, the parties should be redirected to an Informal Conflict Resolution practitioner. If the process is successful in resolving the complaint, the person responsible for managing the complaint process ensures that any agreed upon restorative and or corrective measures are implemented. This constitutes the resolution of the complaint and the file should be closed. Further information on the informal resolution process is provided earlier in this guide.

Fact-finding

If the person responsible for managing the complaint process is satisfied that he or she has all the facts based on his or her inquiries and that the parties have been heard in accordance with the principles of procedural fairness, he or she may decide not to undertake an investigation, inform the parties accordingly of his or her reasons, and make a decision as to whether there was harassment, then proceeds to Step 5.

Investigation

If the person responsible for managing the complaint process decides to launch an investigation, he or she assigns a mandate to an investigator(s) (either sourced internally or through the Public Works and Government Services Canada Standing Offer Index (<http://soi.pwgsc.gc.ca/app/index.cfm?Fuseaction=prg.main&altlang=-e>)) and ensures that the person(s) conducting investigations are qualified in accordance with the Competencies Profile for Harassment Investigators ([/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp](http://pubs.pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp)), that they are impartial, have no supervisory relationship with the parties, and that they are not in a position of conflict of interest. Investigators must apply the principles of procedural fairness which include the individual's right to be heard, to be given a fair opportunity to present his or her case, to be given adequate time and sufficient detail to respond, and to be aware of the information held by the decision-maker prior to the decision being made (for more information on procedural fairness, please consult your organization's Legal services or Labour Relations advisors.)

The person responsible for managing the complaint process notifies the complainant and the respondent that an investigation has been launched, and informs them of their rights and responsibilities as well as possible options to access support and advice during any resolution process associated with the complaint.

If during the investigation process the parties undertake to informally resolve the complaint, the investigator will be asked to suspend the investigation pending further instructions. If the parties are successful in resolving the complaint, the investigation is terminated. If the informal resolution process is unsuccessful or if the person responsible for managing the complaint process concludes that progress is not being made in the resolution of the complaint after having spoken with the parties, the investigator is asked to resume his or her activities and the parties are notified of the intent to restart the investigation.

For more information related to the investigation process, please refer to the [Investigation Guide for the Policy on Harassment Prevention and Resolution \(hig-eng.asp\)](#).

Consideration

Being mindful of the parties' needs

Clear, timely communication with all involved parties is important throughout the process. The involved parties should be kept informed of developments.

During the resolution process, all parties should be treated fairly and objectively.

The complainant and respondent should also be asked what type of support and assistance they require throughout the process and be provided with options of appropriate resources.

Assessing the need to separate the parties

It is also important to consider the working relationship between the two parties. Occasionally, the complaint will be such that the two parties are able to continue working productively without changing their working relationship. This may be because they have minimal day-to-day interaction or there is not a direct reporting relationship. In other situations, however, the complaint process is a time of extreme tension that is very stressful on the working relationship of the involved parties. This, in turn, affects not only the productivity of the involved parties but also creates tension that pervades the entire work environment and reduces productivity of other employees as well. When this is likely to happen it may be necessary to separate the complainant and respondent in some way. The need to separate the parties should

be assessed carefully in consultation with the employees' manager(s). It may be sufficient to temporarily remove the reporting relationship. It may be appropriate to have the parties working from separate locations. Or it may require separating them, both hierarchically and physically. Any of these actions has consequences for the parties and for operations. Such hierarchical or physical separation should not be seen as a punitive or a disciplinary act against either party.

Step 4 – Rendering a decision

Following a fact-finding exercise or an investigation, the person responsible for managing the complaint process reviews all the relevant information and renders a decision. He or she then informs the parties in writing of his or her decision as to whether there was harassment and notifies their manager(s). A copy of the final investigation report, if applicable, is provided to both parties.

Other recourses

It is important to follow procedural fairness in the process and justify any decision made. This is especially important given that there are other recourse mechanisms available to employees.

The parties may grieve the decision or the manner in which the complaint was addressed or the disciplinary measures. This could result in a grievance going to arbitration by the Public Service Labour Relations Board.

The decision could also be challenged in Federal Court where the review would focus on whether or not the process respected the principles of procedural fairness.

If the harassment complaint relates to one of the grounds prohibited under the Canadian Human Rights Act (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>) the complainant has the right to file a complaint with the Human Rights Commission.

Step 5 - Restoring the well-being of the workplace

From the time a complaint is filed, the person responsible for managing the complaint process follows-up with the employees' manager to ensure that issues, concerns and needs of all parties involved are addressed throughout the complaint process as well as any detrimental impacts resulting from the incidences of harassment.

The harassment complaint process can be difficult and stressful for all parties involved and may have an impact on other colleagues. Regardless of the outcome of the formal process, further action may be needed by the responsible manager to ensure that anyone

who interferes with the resolution of a complaint with threats, intimidation or retaliation are addressed and that positive and respectful working relationships are restored in the work unit.

This may be accomplished with the input of all parties involved and may require the assistance of a specialist, and the support of union representatives to re-establish trust, improve communication and encourage positive working relations.

For more information on restoring the wellbeing of the workplace please refer to *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide (rwfhc-eng.asp)*.

Corrective or disciplinary measures

Where corrective or disciplinary measures may be required, the employee's manager receives a copy of the final investigation report, if applicable, and determines the measures in consultation with his or her labour relations advisor. Reasonable, timely corrective/disciplinary measures should be taken based on the conclusions of the investigation or the fact-finding, taking into account the values of the public sector, circumstances, legislation, precedents, policies and guidelines. The nature of the measures imposed such as the type and quantum of such measures (for example: a 10 day suspension) may be disclosed to the complainant(s) subject to the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>). Likewise, if the complaint is determined to have been vexatious or made in bad faith, the respondent may be informed of the nature of the corrective or disciplinary measures imposed, subject to the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>). For more information, please refer to the Information Notice 2007-15 - Release of Harassment Investigation Material.

The person responsible for managing the complaint process follows up to ensure that timely restorative, corrective and/or disciplinary measures are taken by the employee's manager, if warranted. Disciplinary measures may also be taken against any manager who is aware of a harassment situation and fails to take corrective action or anyone who interferes with the resolution of a complaint with threats, intimidation or retaliation.

Information management

Any documents related to the investigation are filed in a separate harassment complaint file. In other words, no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure. The harassment complaint file is kept for two years following the last administrative activity in relation to an individual case. These documents should be securely stored by the department.

Annex A — Examples of what may or may not constitute harassment

Remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

Inappropriate behaviour that is not harassment but still needs to be addressed

- Talking loudly in the workplace.
- Always being in a bad mood.
- Slamming doors.
- Constantly interrupting colleagues in a meeting.
- Barging in on colleagues who are having a conversation.
- Whining about trivial things.

What does not generally constitute harassment

- Carrying out managerial duties where the direction was carried out in a respectful and professional manner.
- Allocating work.
- Following-up on work absences.
- Requiring performance to job standards.
- Taking corrective or disciplinary measures when justified.
- A single or isolated incident such as an inappropriate remark or having an abrupt manner.
- Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
- A social relationship welcomed by both individuals.
- Friendly gestures among co-workers such as a pat on the back.
- The normal exercise of management rights. ²
- Supervisory mistakes.
- Work-related stress.
- Conditions of works.
- Difficult professional constraints such as a budget reduction exercise.
- Conflicts. ³
- Constructive criticism about the work mistake and not the person.
- Counselling an employee on his performance appraisal when done in a non discriminatory or respectful manner.

What may constitute harassment

- Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
- Exclusion from group activities or assignments without valid reason.
- Statements damaging to a person's reputation or career.
- Making sexually suggestive remarks or innuendos.
- Physical contact such as touching or pinching.
- Removing areas of responsibility unjustifiably.
- Inappropriately giving too little or too much work.
- Constantly overruling authority without just cause.
- Unjustifiably monitoring everything that is done.
- Blaming an individual constantly for errors without just cause.

What generally constitutes harassment

- Serious or repeated rude, degrading, or offensive remarks, such as teasing related to a person's physical characteristics or appearance, put-downs or insults.
- Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the *Canadian Human Rights Act*.
- Repeatedly singling out an employee by assigning him/her with demeaning and belittling jobs that are not part of his/her regular duties.
- Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.
- Unwelcome social invitations, with sexual overtones or flirting, with a subordinate.
- Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
- Intimidation, threats, verbal abuse, blackmail, yelling or shouting.
- Caressing, kissing or fondling someone against his or her will (could be considered assault).
- Comments, repeated insinuations or false accusations to destroy a person's reputation.
- Insults or humiliations, repeated attempts to exclude or isolate a person.
- Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
- Persistently asking someone out, despite being turned down.
- Stalking an individual.
- Racist and discriminatory comments or offensive jokes.
- Inappropriate questions, suggestions or remarks about a person's sex life.

- Systematically interfering with normal work conditions, sabotaging places or instruments of work.
- Abuse of authority or power to threaten a person's job or undermine his or her performance.
- Bullying (physical, verbal, social, cyber).
- Falsely accusing and undermining a person behind closed doors, controlling a person's reputation by rumor-mongering, controlling the person by withholding resources (time, budget, autonomy, training) necessary to succeed.
- Humiliating a person in front of colleagues, engaging in smear campaigns.
- Arbitrarily taking disciplinary action against an employee.

Annex B — Scenarios with examples of what may or may not constitute harassment

Example 1

What does not constitute harassment

Bob is a supervisor. Dan, one of his staff consistently does not finish his tasks and leaves them for the person on the next shift. Bob has spoken to him twice in a courteous manner and has left him two notes. As Dan's performance does not improve, Bob meets him again to discuss work objectives, standards and deadlines.

What may constitute harassment

Bob meets with Dan a third time and becomes impatient with him by raising his voice during the meeting and by making accusatory statements such as 'you are incompetent'.

What is harassment

Bob speaks to Dan in a belittling and demeaning manner and calls him a slow, lazy and incompetent person. He has threatened to fire him on more than one occasion if he doesn't shape up and has warned him that there are lots of people waiting in line to take his place. In a fit of rage, Bob throws Dan's report in the garbage and laughs sarcastically at Dan.

Dan feels that Bob had been rude to him by making degrading and offensive comments and fears Bob's behaviour towards him. He feels his livelihood is also being threatened.

Example 2

What does not constitute harassment

The Workplace emergency response team are out on an exercise. Once completed, and after working hours, the team decides to go to the local pub. One of the team members, Louise, a new employee, and Mike exchanged differing views on a political topic.

What may constitute harassment

When it is time to leave, Mike, who had too much to drink, tells Louise, the designated driver, 'where to go' by using profane language. Louise is upset by the incident and approaches her union representative the following morning. Mike, Louise and the union representative meet, Mike acknowledges his inappropriate behaviour and offers an apology to Louise. Louise accepts the apology.

What is harassment

Mike returns to the workplace and speaks to his colleagues about Louise's reaction and refers to her as a 'cry-baby', a whiner and tries to convince them that she does not belong on the Emergency response team. He deliberately ignores her by not answering her questions and winks at his colleagues whenever she speaks in a meeting.

Louise had accepted Mike's apology and believed that the incident had been resolved informally. She now feels that this incident has 'crept' into the workplace and has a detrimental impact on her and on her relationships with Mike and her other colleagues.

Example 3

What does not constitute harassment

Albert, a term employee, has been waiting for two weeks to have his summer holidays approved. He has asked his manager Pierre twice and each time Pierre responded that he was busy and that he would get back to him as soon as he had some time.

What may constitute harassment

In the course of a conversation with a colleague, Albert learns that everyone else's leave has been approved for some time now. Albert also learns that everyone's term position has been extended as well except his. Albert recalls other occasions where he has had problems getting things approved, for example professional opportunities and family related leave.

What is harassment

Albert schedules more than one appointment with Pierre to discuss his concerns. Pierre cancels all appointments at the last minute without having valid reasons for doing so.

Albert feels isolated and singled out in his sector and believes Pierre is abusing his authority by withholding leave approval and blocking career opportunities for advancement.

Footnotes

- 1 Under certain circumstances, encouraging a person to voice his or her concerns with an alleged harasser may not be appropriate. This should be determined on a case by case basis.
- 2 Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.
- 3 Unresolved conflicts and build-up of stress inducers can be precursors to harassment.

Date modified:

2012-12-31

CBSA Code of Conduct

We respect human dignity and the value of every person by:

- maintaining collaborative working relationships through honest and positive communications free from harassment and discrimination.

B. Accountability and Professional Conduct

We recognize that CBSA's policies, standards, procedures and practices provide the boundaries within which we demonstrate professional conduct with respect and integrity.

D. Expected Standards of Conduct

4. Private, Off-Duty Conduct and Outside Activities

Clarification: Off-duty can be defined as any time when we are not under the employer's responsibility.

We understand that our outside activities and off-duty conduct are usually private matters. They could become work-related matters, however, if they have negative consequences on the Agency. **We avoid such activities, which may include those that:**

- lead other employees to refuse, be reluctant or be unable to work with us

9. Harassment and Discrimination

Our CBSA value of **Respect** encompasses all that we do to value the inherent dignity of all people. We show respect by never engaging in discriminatory or harassing behaviour.

Harassment is any conduct by an individual that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Everyone is entitled to work in an environment free from harassment and discrimination. These factors affect workplace and individual well-being and we acknowledge that they will not be tolerated. We accept our responsibility to treat fellow employees with fairness, respect and dignity, and we work with management to help foster a workplace that is safe and healthy.

We do not engage in any harassing or discriminatory behaviour, action or inaction that could harm an employee's working relationships, job security or general well-being at work. This includes harassment or discrimination of CBSA employees that may happen outside the workplace or outside working hours including activities on social media fora.

Harassment is a serious matter. The filing of frivolous or unsubstantiated harassment and/or discrimination claims can damage an employee's reputation and cause them emotional harm. We recognize that this is unacceptable and therefore we make every effort to resolve the situation or conflict as soon as possible, in a fair and respectful manner, before resorting to the complaint process.

If we witness harassment or discrimination or we are being harassed or subjected to discrimination, we will seek guidance and support from our manager. In cases where our manager is the source of our harassment or discrimination we will seek guidance and support from another manager. Additionally, we can explore options by contacting an Informal Conflict Management System Advisor, the Office of Values and Ethics, or our union representative.

11. Contact With the People We Work With

Our CBSA values of **Respect, Integrity** and **Professionalism** guide our interactions with the people we work with including colleagues, clients, and stakeholders.

As CBSA employees we demonstrate these values in a number of ways, including:

- by communicating with others, at all times, in a respectful manner including on social media fora and when using electronic communications;
- by never engaging in discriminatory or harassing behaviour;
- by considering the effect our decisions and actions have on others; and
- by never making abusive, derisive, threatening, insulting, offensive or provocative statements or gestures to or about another person. Consult section 2 of the Canadian Human Rights Act.

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- by never making abusive, derisive, threatening, insulting, offensive or provocative statements or gestures to or about another person. Consult section 2 of the Canadian Human Rights Act.

From: CBSA-ASFC_Arming_Firearm_Removals-Retraits_Arme_a_feu_Armement
Sent: July 24, 2015 1:54 PM
To: CBSA-ASFC_Arming_Firearm_Removals-Retraits_Arme_a_feu_Armement
Subject: Standard response for non-administrative reasons

Copy and paste this email along with the 2 attachments to any new removal due to non-administrative reasons.

English Version

*** La version française suit ***

Hello,

Thank you for your e-mail.

Immediate action:

- ❖ If any of the following information was not included in your original notification, please provide it as soon as possible:
 - Employee name;
 - Serial numbers of firearm and/or details other defensive equipment removed (e.g. baton, OC spray);
 - Date the defensive equipment was removed;
 - Reason(s) for the removal;
 - The name and title of the member of management who authorized the removal; and
 - Details of any previous removals.
- ❖ Complete PART 1 of the form attached

Your next steps in the next 72 hours (as applicable):

- Ensure that the employee's director reviews the decision;
- If need be, submit a request for an extension of the 72 hour review;
- If the continued removal of the Agency firearm and/or defensive equipment is not in accordance with section 8.39 of this directive, the employee's director may approve the return of the Agency firearm and/or defensive equipment and notify the Arming Division of the return; or
- Continue with the removal and complete PART 2 of the form attached.

Please note that all sensitive information being sent to the Arming removal and return inbox must be encrypted.

Should you require any additional guidance regarding your officer's wellbeing, our Psychological Support Professional is available to assist during any step of the removal and return process. *For urgent matters outside normal working hours she can be contacted (via blackberry) at Alphonso, Carole <Carole.Alphonso@cbsa-asfc.gc.ca>

Please feel free to contact us if you have any questions.
More detailed information on the removal process is provided below.

As per the CBSA Directive on Agency Firearms and Defensive Equipment, the following is a reminder as to the process to follow when removing, reviewing, and returning Agency Firearms and Defensive Equipment for non-administrative reasons.

The attached template is to assist with the removal and return process:

- PART 1 is to be completed and returned to Arming within 24hrs of the removal,
- PART 2 is to be completed and returned to Arming within 72hrs of the removal,
- PART 3 is to be completed and returned to Arming when your region is ready to make a recommendation to return defensive equipment

Removal of Agency Firearms and Defensive Equipment for Non-Administrative Reasons

8.39 Management shall remove Agency firearm(s) and/or defensive equipment from any officer, employee or recruit for the following reasons:

- a. Criminal charge or conviction for any offence involving violence or threat of violence;
- b. Threats or actual violent behaviour towards others or threats to do harm to themselves;
- c. Alcohol or substance abuse;
- d. The discovery of a medical condition (physical condition or serious psychiatric condition or serious emotional instability), whether medicated or not which may negatively influence the ability of the individual to possess, wear, or use defensive equipment; or
- e. The officer is under investigation for a matter involving the use of excessive force or assault (e.g. striking a compliant individual); or
- f. In the opinion of the Agency, it is not in the best interests of the Agency that an officer continues to carry or possess an Agency firearm or defensive equipment.

8.40 Officers, employees, or recruits must inform their immediate supervisor or manager when they have knowledge of or reason to suspect a condition exists that may affect a co-worker's, a supervisor's or their own capacity or ability to possess, wear or use Agency firearms and/or defensive equipment.

8.41 The Arming Division, Training and Development Directorate, Human Resources Branch must be informed in writing of the decision to remove an Agency firearm and/or defensive equipment for non-administrative reasons within 24 hours of the action.

Review and Return of Agency Firearms and Defensive Equipment

8.42 The decision to remove an Agency firearm and/or defensive equipment from any officer must be reviewed within 72 hours³ of the action by that employee's director.

³ The employee's director can make the decision in less than 72 hours, however once the decision has been rendered, it cannot be rescinded and will have to be referred to the Arming Division.

8.43 All requests for an extension of the 72 hour review must be submitted in writing to the Arming Division inbox, Training and Development Directorate, Human Resources Branch.

8.44 Following the review, the employee's director may then authorize the return of the Agency firearm and/or defensive equipment or the continued removal of the Agency firearm and/or defensive equipment. The employee's director may only approve the return of the Agency firearm and/or defensive equipment where it is determined that the continued removal of the Agency firearm and/or defensive equipment is not in accordance with section 8.39 of this directive.

Arming Division Note: The employee's director can make the decision to return the defensive equipment in less than 72 hours (as noted in 8.42 above), however once the

decision has been rendered, it cannot be rescinded and will have to be referred to the Arming Division following the continued process noted below.

8.45 Where the continued removal of the Agency firearm and/or defensive equipment is required, the director shall create and implement an action plan for the potential return of the firearm and/or defensive equipment. Upon the employee's completion of the action plan, the employee's director will make a written recommendation to the Regional Review Committee with supporting evidence, as required, for the return or permanent removal of the Agency firearm and/or defensive equipment.

8.46 At the same time as the director's written recommendation is presented to the Regional Review committee, a copy will also be provided to the employee. The employee then has the opportunity to prepare and deliver a written submission to the Regional Review Committee for them to consider during their review of the matter.

8.47 Once the Regional Review Committee confirms that the director's recommendation is appropriate, the Regional Review Committee shall send the recommendation to the Director General, Training and Development Directorate via the Arming Division inbox. However, if the committee is not in agreement, it shall refer the matter back to the employee's director along with its reasons, any outstanding concerns and provide possible suggestions for the director to address prior to resubmitting a recommendation to the Regional Review Committee.

8.48 The Arming Division, Training and Development Directorate, will complete an analysis of the recommendation to determine whether it is in accordance with the law and CBSA policies, directives and standard operating procedures. The result of this analysis and a copy of the regional recommendation will then be forwarded to the Director General, Training and Development Directorate for decision.

8.49 The Director General, Training and Development Directorate, shall consider the recommendation and any other relevant submissions and will then direct the return of the firearm(s) and/or defensive equipment, continuation with the temporary removal of the firearm(s) and/or defensive equipment until certain conditions are met, or direct that the firearms(s) and/or defensive equipment be removed permanently. The decision of the Director General, Training and Development Directorate will then be communicated to the affected officer's Regional Director General.

8.50 Subsequent to approval for return of the Agency firearm and/or defensive equipment under this directive, the Arming Division, Training and Development Directorate, Human Resources Branch must be notified in writing within 24 hours of the return of any firearm and/or defensive equipment. This notice shall also include confirmation that all activities contained in the conditions of the return of the firearm or other defensive equipment have been met.

The recommendation(s) of the regional committee must be approved and forwarded by your Regional Director General to the Director General, Training and Development Directorate, Human Resources Branch.

CONSENT TO UNDERGO A FITNESS TO WORK EVALUATION

I, (name) _____, agree to undergo a Fitness To Work Evaluation (FTWE). The purpose of the evaluation is to determine my fitness to work. The reasons I have been referred to undergo the Evaluation have been fully explained to me by _____
(Name/ Department)

I understand and agree that my department will provide to the physician a detailed description of the nature of their concerns about my medical fitness to work and that I will receive a copy of this written referral before the medical assessment. I understand that my department including Human Resources is restricted by the *Privacy Act* to release to the physician only information directly relevant to my situation as described in the written referral and necessary to make the assessment.

I authorize the physician to disclose and provide my employing department with an interpretation of the Fitness To Work Evaluation which will contain a description of my abilities to perform the duties of my position including any functional limitations that may arise due to medical (physical and mental) conditions identified during the Evaluation. The physician will not disclose any clinical information to my employing department.

I have read the information above or had it explained to me and I understand the nature of a Fitness to Work Evaluation and the uses to which the personal information collected by my physician may be put. I have had the opportunity to seek independent advice or the advice of my union. I declare that my consent has been given voluntarily. I understand that I may withdraw my consent at any time. Where I revoked my consent to undergo a Fitness to Work Evaluation, I authorize my physician to advise my employing department that I have done so.

Unless previously revoked by me, this consent to the evaluation and interpretation as specified expires on: (date)

Signature: _____ **Date:** _____
(Signature and print)

Witness: _____ **Date:** _____
(Signature and print)



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada



PROTECTED B

DATE

Dear Dr. xxxx,

NAME has been employed with the Canada Border Services Agency (CBSA) since DATE. The employee is a GROUP-LEVEL, POSITION TITLE in the DISTRICT NAME District.

This position requires work on a varying shift schedule. These shifts can take place during the day, evening, and night, and on weekends; each scheduled shift varies from XX to XX hours in duration. NAME's position requires that they are able to perform (INSERT DESCRIPTION OF GENERAL DUTIES).

Officers, both inland and at a port of entry, exercise the powers of a peace officer including the use of force when necessary in relation to detention and arrest of individuals, including those who obstruct officers engaged in the performance of their duties. These duties may require officers to use defensive equipment such as a baton, Oleoresin Capsicum spray (also known as pepper spray) and a duty firearm.

Officers, in preparation to becoming armed need to undergo a variety of assessments both psychological and physical. The Minnesota Multiphasic Personality Inventory and 16 Personality Factors (MMPI & 16PF) assessments have been used as a prerequisite for firearm training and for recruitment into the Agency since the inception of the Arming Program. The MMPI & 16PF is a personality inventory used to assist in identifying personality structure and psychopathology including the identification of possible judgment or behavioral issues which may negatively affect an officer's ability to exercise sound judgment in situations where use of force may be required. Employees who have enforcement duties as part of their job function are also required to undergo a Health Canada Category III Medical Assessment.

The training to become an armed CBSA officer requires a candidate to successfully complete lessons that include but are not limited to shooting fundamentals, pistol handling skills, Control and Defensive Tactics, and Firearms and Range Safety. After completing this course, learners will be able to use the CBSA duty firearm judiciously according to CBSA policies and procedures.

For a more in-depth description of the job requirements please see the attached job description.

DETAILS REGARDING THE CIRCUMSTANCES SURROUNDING WHY THE DEFENSIVE EQUIPMENT WAS REMOVED.

Following CIRCUMSTANCES WHICH LEAD TO THE REMOVAL OF THE DEFENSIVE EQUIPMENT, management made the decision to remove NAME's defensive equipment. IF

Canada

APPROPRIATE, INCLUDE ADDITIONAL INFORMATION REGARDING THE CIRCUMSTANCES AFTER THE DEFENSIVE EQUIPMENT WAS REMOVED (SUCH AS EMPLOYEE WENT ON LEAVE, RETURNED TO WORK, WAS ASSIGNED LESS SENSITIVE DUTIES, ETC.).

The CBSA is requesting an assessment of NAME as it pertains to their ability to carry/use defensive equipment and employ use of force techniques requiring mental judgment and physical abilities in your medical opinion:

- 1) Can NAME perform all duties relating to the job of a BSO/INLAND/INVESTIGATOR/INTELLIGENCE Officer?
- 2) At this time, is NAME capable to work with the public in the capacity described in his/her duties?
- 3) Is NAME fit to carry/use defensive equipment and perform his/her duties effectively and safely?
- 4) Are there any concerns, limitations and/or restrictions of which management should be aware related to NAME's ability to carry/use defensive equipment in the performance of his/her duties?
- 5) If there are concerns, limitations and/or restrictions related to NAME's ability to carry/use defensive equipment in the performance of his/her duties, please provide additional information regarding the concerns, limitations and/or restrictions as it pertains to NAME's duties.
- 6) If there are concerns, limitations and/or restrictions, how long it is anticipated that these will be in effect?
- 7) In your professional opinion, do you believe that the CBSA can return NAME to full duties, including the use of their defensive equipment (baton, oleoresin capsicum spray, and duty firearm), and use of force without cause for concern for the safety of the employee and the public?

Should you require additional information with regards to the employee's duties or any have questions regarding this request for assessment, please contact me at (xxx) xxx-xxxx.

Yours truly,

NAME
TITLE
DISTRICT NAME District

Encl.

Immediate action:

- ❖ If any of the following information was not included in your original notification, please provide it as soon as possible:
 - Employee name;
 - Serial numbers of firearm and/or details other defensive equipment removed (e.g. baton, OC spray);
 - Date the defensive equipment was removed;
 - Reason(s) for the removal;
 - The name and title of the member of management who authorized the removal; and
 - Details of any previous removals.
- ❖ Complete PART 1 of the form attached

Your next steps in the next 72 hours (as applicable):

- Ensure that the employee's director reviews the decision;
- If need be, submit a request for an extension of the 72 hour review;
- If the continued removal of the Agency firearm and/or defensive equipment is not in accordance with section 8.39 of this directive, the employee's director may approve the return of the Agency firearm and/or defensive equipment and notify the Arming Division of the return; or
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Please feel free to contact us if you have any questions.
 More detailed information on the removal process is provided below.

As per the CBSA Directive on Agency Firearms and Defensive Equipment, the following is a reminder as to the process to follow when removing, reviewing, and returning Agency Firearms and Defensive Equipment for non-administrative reasons.

The attached template is to assist with the removal and return process:

- PART 1 is to be completed and returned to Arming within 24hrs of the removal,
- PART 2 is to be completed and returned to Arming within 72hrs of the removal,
- PART 3 is to be completed and returned to Arming when your region is ready to make a recommendation to return defensive equipment

Removal of Agency Firearms and Defensive Equipment for Non-Administrative Reasons

8.39 Management shall remove Agency firearm(s) and/or defensive equipment from any officer, employee or recruit for the following reasons:

- a. Criminal charge or conviction for any offence involving violence or threat of violence;
- b. Threats or actual violent behaviour towards others or threats to do harm to themselves;
- c. Alcohol or substance abuse;
- d. The discovery of a medical condition (physical condition or serious psychiatric condition or serious emotional instability), whether medicated or not which may negatively influence the ability of the individual to possess, wear, or use defensive equipment; or
- e. The officer is under investigation for a matter involving the use of excessive force or assault (e.g. striking a compliant individual); or
- f. In the opinion of the Agency, it is not in the best interests of the Agency that an officer continues to carry or possess an Agency firearm or defensive equipment.

8.40 Officers, employees, or recruits must inform their immediate supervisor or manager when they have knowledge of or reason to suspect a condition exists that may affect a co-worker's, a supervisor's or their own capacity or ability to possess, wear or use Agency firearms and/or defensive equipment.

8.41 The Arming Division, Training and Development Directorate, Human Resources Branch must be informed in writing of the decision to remove an Agency firearm and/or defensive equipment for non-administrative reasons within 24 hours of the action.

Review and Return of Agency Firearms and Defensive Equipment

8.42 The decision to remove an Agency firearm and/or defensive equipment from any officer must be reviewed within 72 hours³ of the action by that employee's director.

³ The employee's director can make the decision in less than 72 hours, however once the decision has been rendered, it cannot be rescinded and will have to be referred to the Arming Division.

8.43 All requests for an extension of the 72 hour review must be submitted in writing to the Arming Division inbox, Training and Development Directorate, Human Resources Branch.

8.44 Following the review, the employee's director may then authorize the return of the Agency firearm and/or defensive equipment or the continued removal of the Agency firearm and/or defensive equipment. The employee's director may only approve the return of the Agency firearm and/or defensive equipment where it is determined that the continued removal of the Agency firearm and/or defensive equipment is not in accordance with section 8.39 of this directive.

Arming Division Note: The employee's director can make the decision to return the defensive equipment in less than 72 hours (as noted in 8.42 above), however once the decision has been rendered, it cannot be rescinded and will have to be referred to the Arming Division following the continued process noted below.

8.45 Where the continued removal of the Agency firearm and/or defensive equipment is required, the director shall create and implement an action plan for the potential return of the firearm and/or defensive equipment. Upon the employee's completion of the action plan, the employee's director will make a written recommendation to the Regional Review

Committee with supporting evidence, as required, for the return or permanent removal of the Agency firearm and/or defensive equipment.

8.46 At the same time as the director's written recommendation is presented to the Regional Review committee, a copy will also be provided to the employee. The employee then has the opportunity to prepare and deliver a written submission to the Regional Review Committee for them to consider during their review of the matter.

8.47 Once the Regional Review Committee confirms that the director's recommendation is appropriate, the Regional Review Committee shall send the recommendation to the Director General, Training and Development Directorate via the Arming Division inbox. However, if the committee is not in agreement, it shall refer the matter back to the employee's director along with its reasons, any outstanding concerns and provide possible suggestions for the director to address prior to resubmitting a recommendation to the Regional Review Committee.

8.48 The Arming Division, Training and Development Directorate, will complete an analysis of the recommendation to determine whether it is in accordance with the law and CBSA policies, directives and standard operating procedures. The result of this analysis and a copy of the regional recommendation will then be forwarded to the Director General, Training and Development Directorate for decision.

8.49 The Director General, Training and Development Directorate, shall consider the recommendation and any other relevant submissions and will then direct the return of the firearm(s) and/or defensive equipment, continuation with the temporary removal of the firearm(s) and/or defensive equipment until certain conditions are met, or direct that the firearms(s) and/or defensive equipment be removed permanently. The decision of the Director General, Training and Development Directorate will then be communicated to the affected officer's Regional Director General.

8.50 Subsequent to approval for return of the Agency firearm and/or defensive equipment under this directive, the Arming Division, Training and Development Directorate, Human Resources Branch must be notified in writing within 24 hours of the return of any firearm and/or defensive equipment. This notice shall also include confirmation that all activities contained in the conditions of the return of the firearm or other defensive equipment have been met.

The recommendation(s) of the regional committee must be approved and forwarded by your Regional Director General to the Director General, Training and Development Directorate, Human Resources Branch.

Version française

*** The

Bolton, Bernée

From: St John, Faith
Sent: September 7, 2011 03:58 PM
To: Bolton, Bernée; Baird, Trevor; Peterson, Ivan
Cc: Collins, Derek; Steeksma, Erin
Subject: Border officer sues for workplace sexual harassment

Just posted on the Vancouver Sun website

Border officer sues for workplace sexual harassment

By NEAL HALL, VANCOUVER SUN September 7, 2011 3:26 PM

VANCOUVER -- A border officer with the Canada Border Services Agency is suing her employer and a work colleague for sexual harassment and mental abuse.

Michelle Andrea Pele of Surrey claims in her legal action that her colleague Marco Castagna insulted her, made sexually explicit comments about her and other women, directed profanities at her and forwarded offensive and degrading emails, causing her emotional and mental distress.

The lawsuit claims Pele made her concerns about Castagna known to her employer on Aug. 29, 2009, when he allegedly sexually assaulted Pele at work.

Pele has since been on medical leave since then and is receiving counselling, her lawsuit says.

Pele, who claims the CBSA is vicariously liable for the actions of Castagna, was hired in 2004 as a border officer.

She claims the CBSA was negligent in failing to use reasonable care in conducting an investigation of her complaints and to ensure the workplace was free from sexual harassment and assault.

She claims she suffered mental and emotional abuse.

None of the allegations have been proven in court.

The defendants are expected to file statements of defence at a later date.

Read more:

<http://www.vancouversun.com/Border+officer+sues+workplace+sexual+harassment/5366687/story.html#ixzz1XJIWFvgU>

Faith St. John

Communications Advisor
Canada Border Services Agency | Agence des services frontaliers du Canada
204 - 333 Dunsmuir St. | 204 - 333 rue Dunsmuir Vancouver V6B 5R4
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Bolton, Bernée

From: CBSA/ASFC, Media Monitoring/surveillance des médias
Sent: September 8, 2011 04:05 AM
To: CBSA/ASFC, Media Monitoring/surveillance des médias
Subject: Media Issues/ Enjeux médiatiques - 2011-09-08

MEDIA ISSUES ENJEUX MÉDIATIQUES 2011-09-08

Corporate Issues / Enjeux organisationnels

BORDER OFFICER FILES SEX HARASSMENT LAWSUIT AGAINST CBSA, COLLEAGUE

(Neal Hall)

An officer with the Canada Border Services Agency is suing her employer and a work colleague for sexual harassment and mental abuse. Michelle Andrea Pele of Surrey claims in her legal action that her colleague Marco Castagna insulted her, made sexually explicit comments about her and other women, directed profanities at her and forwarded offensive and degrading emails, causing her emotional distress. The lawsuit claims when Pele made her concerns about Castagna known to her employer, he sexually assaulted Pele at work on Aug. 29, 2009. Pele has since been on medical leave and is receiving counselling, her lawsuit says. Pele, who claims the CBSA is vicariously liable for the actions of Castagna, was hired in 2004 as a border officer. She claims the CBSA was negligent in failing to use reasonable care in conducting an investigation of her complaints and to ensure the workplace was free from sexual harassment. She claims she suffered mental and emotional abuse. None of the allegations have been proven in court. The defendants are expected to file statements of defence at a later date.

Vancouver Sun (A2)

Cases / Cas

ACCUSED PIMP ASKS TO STAY IN JAIL

(Tom Godfrey)

An accused pimp -- and one of Canada's most wanted fugitives -- often travelled from Toronto to Montreal befriending young girls at bus and train stations then allegedly forced them into a life of prostitution, police said. Walford Uriah Steer, 39, an illegal immigrant from Jamaica with 76 convictions, appeared in orange prison overalls before a Finch Ave. W. court on Wednesday to answer charges related to his arrest last week for allegedly trying to pimp a 16-year-old girl. He has been charged with procuring for the purpose of prostitution, exercising control and living off the avails of prostitution. Steer asked a justice of the peace to remain in jail and his case was adjourned until Thursday when his lawyer will be able to attend court... He was the subject of a nationwide manhunt that ended after he and 31 others had their identities posted online by the Canada Border Services Agency.

Toronto Sun (3)

ILLICIT CRITTERS, GUN LANDS MAN IN HOT WATER

(Tony Blais)

An Edson man who tried to cross the U.S. border into Canada with a loaded gun in his pants and scorpions, tarantulas and snakes in his truck is facing a hefty fine. Terrell John Gruse, 25, pleaded guilty Wednesday in provincial court to several charges under the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act and the Species at Risk Act. According to agreed facts, Gruse drove from Edson in the summer of 2009 to visit his dad in Richland, Wash. While there, Gruse bought at pet stores a Chilean rose hair tarantula, a pink-toe tarantula and four emperor scorpions, the latter which are strictly regulated. Gruse also used a snake hook and pillow case to catch five western rattlesnakes -- which are listed in Canada as a threatened species -- and four pacific gopher snakes. On July 11, 2009, Gruse drove his pickup truck to the U.S./Canada border with a friend and indicated he had nothing to declare at the Kingsgate Port of Entry in southeastern B.C. However, after being directed to a secondary area for examination, Gruse admitted he had bought a gun and it was in the front of his pants.

mérite d'être pris en considération. Selon le cas, les agents permettront à une personne détenue de demeurer avec son enfant dans un CSI (p. ex. si l'enfant de la personne détenue est encore un nourrisson), dans l'intérêt supérieur de l'enfant.

Q3. Quel pourcentage des détenus sont des demandeurs d'asile?

R3. Les systèmes de l'ASFC ne produisent pas de rapports sur les statistiques demandées.

Q4. Depuis quand les centres de surveillance de l'immigration sont ouverts?

R4. Veuillez consulter le document d'information ci-joint : Infrastructure fédérale de détention de l'immigration

Q5. Depuis quand les personnes sont détenues?

R5. Les dispositions sur les détentions ont été incluses dans les lois sur l'immigration de 1910, 1952 et 1976. De telles provisions peuvent avoir été incluses avant ces mesures législatives.

Q6. Le Sénateur Wilfred Moore veut créer un poste d'inspecteur lié aux détentions? Avez-vous une mise à jour?

A6. Pour toute question à propos des surveillances indépendantes, veuillez contacter Sécurité publique au 613-991-0657.

Q7. Comment fonctionnent les systèmes de plainte dans les centres de surveillance de l'immigration?

A7. Les personnes peuvent aborder tout aspect de leur détention avec un agent de l'ASFC. L'agent examinera les plaintes dans les meilleurs délais possible. Les personnes peuvent également.

Media: / VICE

Issue: Allegations of sexual assault

Q1. What is the SPSA? I'm assuming it stands for the internal investigation mechanism.

Security and Professional Standards Analysis section. It is part of the CBSA internal investigation mechanism.

Q2. What is the CBSA's internal policy on sexual assault? Please send me any CBSA policy documents relating to or governing sexual assault or harassment, including the CBSA's Code of Conduct.

A1-2

- The CBSA is committed to nurturing a culture that is founded on values and ethics of the Public Service of Canada and the CBSA *Code of Conduct*, and in which all employees conduct themselves in a way that upholds the integrity of CBSA programs and demonstrates professionalism in their day to day activities.
 - All CBSA employees are subject to a very strict codes of ethics and behaviour.
 - CBSA employees are expected to uphold the law in carrying out their duties. The agency has no tolerance for any illegal or inappropriate actions/behaviours.
 - All allegations of improper or illegal behaviour by CBSA employees are taken very seriously and are thoroughly investigated and addressed accordingly.
 - Any breaches to these codes by employees may result in disciplinary action, up to and including termination.
 - The expectations regarding Sexual harassment is communicated in many documents and policies such as:
 - Values and Ethics Code for the Public Sector <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
 - CBSA Code of Conduct <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/acc-resp/code-eng.html>
 - Policy on Harassment Prevention and Resolution <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26041>
 - Sexual and Physical assaults are defined by the *Criminal Code* and may require Police involvement.
- Q3. Did all of the 13 cases listed in the ATIP involve internal investigations? If so, what prompted these internal investigations? (Please list what prompted each investigation next to the corresponding allegation.)**
- A3.** Please note one case was not included in the ATIP release. There are 14 cases.

#14. Police charged a male CBSA employee with sexual assault, breach of trust, and extortion in 2016. Investigation is ongoing.

All of the 14 cases involved internal investigations.

Cases #1,3,4,5,6,7,9,11,13: complainant filed a complaint with CBSA

Case #2 one of the three filed a complaint with CBSA

Case #8 filed a complaint with CBSA and police

Cases #10,14 filed a complaint with police

Q4. Only two of the 13 cases state information about what happened to the accused CBSA employees (the officers resigned). What happened to the CBSA employees in the other 11 cases? Did the officers continue their employment with the CBSA following the allegations? Did they continue their employment with the CBSA after the internal investigation concluded?

A4. In eight of the 14 cases, the individuals are no longer employees of the CBSA.

In four of the 14 cases, the individuals remain with the CBSA.

Q5. Does the CBSA believe more cases of sexual assault or harassment are happening, but they are not being reported? If so, could internal mechanisms improve to encourage reporting?

A5. The CBSA will not speculate. The CBSA has longstanding processes in place for employees to report allegations of harassment or misconduct, which include sexual assault.

Questions about specific cases:

Please note the CBSA will not disclose the name of the police departments involved.

Case #13:

-Why were police not involved if the complaint was founded?

-Did the officer continue to work with the CBSA after the internal investigation concluded?

The complainant did not file a complaint with the police.

The recruit is no longer with the CBSA.

Case #12:

-Did the officer continue to work with the CBSA after the internal investigation concluded?

-Was the police response local BC police or the RCMP?

The officer is no longer with the CBSA.

Case #10:

-What does "PD" stand for? Which police agency is this? Local or RCMP? In which province?

PD stands for Police Department.

Case #11:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, the CBSA was not able to conclude the investigation.

Case #1:

-Why were police not involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

The allegation was founded.

Case #9:

-Why weren't police involved if the officer resigned?

-Did the SPSA find these allegations founded, unfounded or inconclusive?

The complainant did not file a complaint with the police.

With the individual's resignation, we were not able to conclude the investigation.

Case #8:

-Did police charge the accused male officer with sexual assault? (It doesn't say which officer was charged and I don't want to make assumptions.)

-How is it possible the SPSA found the allegations inconclusive but police found enough evidence to lay charges?

-Were local police involved, or was it RCMP?

The police charged the male.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #7:

-Why were the allegations determined to be unfounded?

The CBSA conducted a full investigation and deemed the allegation to be unfounded. The CBSA uses the term "unfounded" in cases where the evidence disproves an allegation, based on the balance of probability.

Case #6:

-Which police service was involved? In which province? This information is listed for most other cases that involved police.

-Why was the complaint found to be inconclusive?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #5:

-How many officers were accused? Two?

-Were local BC police involved or RCMP?

Two officers were accused.

Case #4:

-Was the officer the student's direct superior?

-Why did the SPSA find the complaint unfounded?

The Officer was not the student's direct superior.

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

Case #2:

-If there were three accusers, why was this complaint found to be inconclusive?

-Why were police not involved?

The CBSA conducted a full investigation and deemed the allegation to be inconclusive. The CBSA uses the term "inconclusive" in cases where the evidence does not prove, or disprove an allegation, based on the balance of probability.

The complainants did not file a complaint with the police.

Case #3:

-How many victims were there in this case?

-Were local police or RCMP involved?

-Was the complaint first brought to the CBSA or to police?

There was one victim in this case.

The complaint was first brought to the CBSA.

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Anti-harassment Workshops

August 23, 2010

We are pleased to inform you that the Canada Border Services Agency (CBSA) has entered into a memorandum of understanding with the Customs and Immigration Union and the Joint Learning Program (JLP) to deliver one-day anti-harassment workshops to all CBSA employees and managers. This important initiative is a priority for the Agency, the goal being to have all employees trained within a five-year period.

While some of you may already be familiar with the JLP, the following link provides information on the program as well as the anti-harassment workshop: <http://www.jlp-pam.ca/home-accueil-eng.aspx>. In brief, the JLP was formed as a result of collective bargaining in the fall of 2004, when the JLP was allocated funding for learning activities jointly developed and delivered by labour and management. The program emphasizes how bargaining agents and employers can work together to modernize and improve relations in the workplace. The anti-harassment workshop aims to give employees the knowledge and skills needed for proactive, effective advocacy of a healthy, harassment-free workplace. While the JLP is based on a partnership between Treasury Board and the Public Service Alliance of Canada, all employees will be invited and strongly encouraged to attend, regardless of which bargaining unit they belong to. Representatives from the various bargaining agents representing CBSA employees were invited to a briefing on this initiative on February 10, 2010.

We are very pleased that this is moving forward and are committed to keeping you up-to-date and informed on the latest developments as they unfold. One of our next steps will be to identify facilitators for the workshops within the CBSA. An official call letter will follow shortly in this regard however, in the interim, should you be interested, the following link will provide you with useful information on becoming a facilitator: <http://www.jlp-pam.ca/invitation-eng.aspx>.

We look forward to your participation in assisting us in fulfilling this initiative.

Stephen Rigby
President

Ron Moran
National President
Customs and Immigration Union

Date Modified: 2010-08-20

24/08/2010



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Policy on the Prevention and Resolution of Harassment in the Workplace

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Preamble

As the employer of the federal Public Service, the Treasury Board is committed to providing a work environment where all persons working for the Public Service are treated with respect and dignity. Bargaining agents are also supportive of this and involved in initiatives to promote such an environment.

Harassment affects workplace and individual well-being and will not be tolerated. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation. The application of this policy will help create a work environment where all are treated with respect and dignity. It will not only promote the well-being of all in the workplace, but it will reinforce those values of integrity and trust that are the foundation of a sound organization.

Dealing with harassment can be a complex matter. What one person may consider to be proper behaviour, another may believe to be harassment. Note that the proper exercise of one's authority or responsibility does not generally constitute harassment. The Appendix provides some examples for better understanding.

The *Canadian Human Rights Act* provides every person in the workplace the right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds.

The Treasury Board policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the *Canadian Human Rights Act*, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

The policy promotes the prevention of harassment and focuses on the prompt resolution of harassment. Whether the source of harassment comes from within the Public Service or from outside, any allegation of harassment is serious and should be taken seriously. Harassment needs to be addressed with sensitivity, promptness and discretion. Open communication and early intervention are essential in preventing and resolving harassment.

Effective date

The effective date of this policy is June 1, 2001.

Policy objective

The purpose of this policy is to foster a respectful workplace through the prevention and prompt resolution of harassment.

Policy statement

Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the Public Service, whether or not they are employees, should enjoy a harassment-free workplace.

Application

This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the *Public Service Staff Relations Act*.

The complaint process as defined in this policy applies to federal public service employees. Though other persons who work for the Public Service cannot access the complaint process described in the policy, managers are nevertheless expected to abide by the spirit of the policy and ensure that their harassment concerns are addressed.

The policy does not apply to complaints from the public. The responsibility for follow-up on such complaints lies with departments/organizations.

Definitions

Harassment (*harcèlement*) - Is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Complaint (*plainte*) - is a formal allegation of harassment submitted in writing to the delegated manager, and which is based on actions defined as *harassment*.

Delegated manager (*gestionnaire délégué*) - is a senior executive designated by the deputy head, accountable for the harassment complaint process.

Mediation (*médiation*) - is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

Policy requirements

- Deputy heads are responsible for fostering a work environment free of harassment.
- All employees must be informed of this policy.
- Learning opportunities related to the *Policy on the Prevention and Resolution of Harassment in the Workplace* must be made available to employees and managers/supervisors.
- Employees must be informed of the name or title and address of the delegated manager (s) in his or her department/organization.
- Early resolution should be used to resolve problems at the outset.
- Mediation must be offered before an investigation is initiated.
- The complaint process, including the investigation if necessary, should be completed without undue delay, normally in six months or less.
- Corrective action must be timely in all situations of harassment, whether it involves employees or other persons working for the Public Service.
- Harassment may result in corrective or disciplinary measures being taken, up to and including termination of employment. Disciplinary or corrective measures may also be taken against the following: any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is

frivolous or in bad faith.

- If a complaint of harassment is determined at the departmental level to be unfounded, and is pursued in the courts or at a tribunal, the respondent's department/organization will provide legal assistance to the respondent.

- Departments/organizations must meet the requirements of this policy.

Responsibility and authority

The ultimate responsibility and authority for applying this policy rests with the deputy head and his or her authorized representative(s).

Expectations

Employees

(a) Employees are expected to act towards other individuals professionally and respectfully.

(b) Employees who believe they have been treated in an improper and offensive manner are expected to communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease. They can get help or guidance from the supervisor, the person designated by the department/organization, or the union.

(c) They can expect to be informed of the Treasury Board policy.

(d) They can expect prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager.

(e) They can expect to be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint.

(f) They will be encouraged to participate in a problem resolution process before proceeding with the complaint process.

Complainants, respondents and witnesses

(a) Complainants, respondents and witnesses are expected to provide information as required in the steps noted below under "Complaint process".

(b) They are expected to co-operate in the complaint process if and when called upon to do so.

(c) They are expected to limit the discussion of the complaint to those who need to know.

(d) They can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.

(e) Complainants and respondents will receive information related to the complaint in writing, including allegations, as noted in the steps below, under "Complaint process", and in accordance with the principles of procedural fairness.

(f) Complainants and respondents may have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process.

- (g) Complainants and respondents can expect to review a copy of the draft report. They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.
- (h) If the complaint is founded, complainants will be informed verbally whether corrective or disciplinary measures will be taken as a result of their complaint.
- (i) If the complaint is frivolous or in bad faith, respondents will be informed verbally whether corrective or disciplinary measures will be taken.
- (j) Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined at the departmental level to be unfounded, is pursued in the courts or at a tribunal.

Managers

- (a) Managers are expected to lead by example and to act respectfully in dealings with employees and other persons working for the Public Service.
- (b) They can expect to have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution.
- (c) They are expected to ensure that employees are aware of the policy and to remind them of its contents as deemed necessary.
- (d) They are expected to ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.
- (e) They are expected to intervene promptly when they become aware of improper or offensive conduct and to involve the parties in resolving the problem.
- (f) They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.
- (g) They are expected to handle all harassment situations confidentially and to ensure that others act accordingly.
- (h) They are expected to address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships.

Delegated managers

- (a) Delegated managers are expected to be impartial in any complaint process in which they are involved.
- (b) They can expect to have access to learning opportunities related to their role and responsibilities as delegated managers.
- (c) They are expected to apply the established steps in the complaint process.
- (d) They are expected to take the necessary action to ensure the confidentiality of complaints.
- (e) They are expected to ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.
- (f) They are expected to offer mediation and to ensure that the mediator or co-mediators meet the requirements of the Shared Mediators Program for Cases of Harassment or

Conflict in the Workplace;

- (g) They are expected to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;
- (h) They are expected to assign a mandate to the investigator(s) and ensure that persons conducting investigations are qualified in accordance with the Competencies Profile for Internal and External Harassment Investigators, that they are impartial, that they have no supervisory relationship with the parties, and that they are not in a position of conflict of interest.
- (i) They are expected to ensure that corrective and/or disciplinary measures are taken, where warranted.
- (j) They are expected to ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.
- (k) They are expected to ensure that parties are provided with the information to which they are entitled.

Investigators

- (a) Investigators are expected to meet the requirements as outlined in the Competencies Profile for Internal and External Harassment Investigators.
- (b) They are expected to apply the principles of procedural fairness.
- (c) They are expected to abide by their assigned mandate.

Early problem resolution

The objective of early resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner. The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary. An allegation of harassment is serious. If a person working for the Public Service believes that he or she has been harassed, the following actions should be taken.

The person who feels offended by the actions of another person working for the Public Service is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

Complaint process

The complaint process applies to federal public service employees. Other persons working for the Public Service who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with the delegated manager. All steps should be completed without undue delay, normally in six months or less. Departments must establish time frames appropriate to their particular organizations, in consultation with their union officials.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

✓ The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- ✓ - must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- ✓ - must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

✓ Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

✗ If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

If the allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services as noted above under "Delegated managers", section (f).

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must meet the requirements as noted previously under "Delegated managers", section (h). The investigator must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to proceed to Step 6.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

Resource body

Under an agreement with the Treasury Board of Canada Secretariat, the Public Service Commission will act as an expert resource body by developing programs and providing services to departments in the prevention and resolution of harassment in the workplace, in such areas as training, mediation and investigation.

Other recourse

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, employees have the right to file a complaint with the Canadian Human Rights Commission.

Assaults including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

If a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this policy will not proceed further and the file will be closed.

Monitoring

Treasury Board of Canada Secretariat and departments/organizations will work together to monitor results in achieving the policy objective and statement.

References

Access to Information Act
Canadian Human Rights Act
Criminal Code
Official Languages Act
Privacy Act
Public Service Employment Act
Public Service Staff Relations Act

Enquiries

Enquiries relating to this policy should be referred to the responsible officer designated

in departmental/organizational headquarters, who in turn may direct questions regarding interpretation to the Human Resources Branch of the Treasury Board of Canada Secretariat.

Appendix - Guide for determining what constitutes harassment

Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Is the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*. The prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

The following are some examples, but not an exhaustive list, to clarify what is meant by "harassment".

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> ■ <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. ■ Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> ■ Criticizing an employee in public. 	<ul style="list-style-type: none"> ■ Allocating work. ■ Following-up on work absences. ■ Requiring performance to job standards. ■ Taking disciplinary measures. ■ <i>A single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> ■ <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> ■ Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> ■ Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the

<ul style="list-style-type: none"> ■ Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> ■ Statements damaging to a person's reputation. 	<p>job.</p> <ul style="list-style-type: none"> ■ Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.
<ul style="list-style-type: none"> ■ Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. ■ Unwelcome sexual advances. 	<ul style="list-style-type: none"> ■ Making sexually suggestive remarks. ■ Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> ■ A social relationship welcomed by both individuals. ■ Friendly gestures among co-workers such as a pat on the back.

Sexual and physical assault are covered by the *Criminal Code*.

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Policy on the Prevention and Resolution of Harassment in the Workplace

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Preamble

As the employer of the federal Public Service, the Treasury Board is committed to providing a work environment where all persons working for the Public Service are treated with respect and dignity.

Bargaining agents are also supportive of this and involved in initiatives to promote such an environment.

Harassment affects workplace and individual well-being and will not be tolerated. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation. The application of this policy will help create a work environment where all are treated with respect and dignity. It will not only promote the well-being of all in the workplace, but it will reinforce those values of integrity and trust that are the foundation of a sound organization.

Dealing with harassment can be a complex matter. What one person may consider to be proper behaviour, another may believe to be harassment. Note that the proper exercise of one's authority or responsibility does not generally constitute harassment. The Appendix provides some examples for better understanding.

The *Canadian Human Rights Act* provides every person in the workplace the right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds.

The Treasury Board policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the *Canadian Human Rights Act*, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

The policy promotes the prevention of harassment and focuses on the prompt resolution of harassment. Whether the source of harassment comes from within the Public Service or from outside, any allegation of harassment is serious and should be taken seriously. Harassment needs to be addressed with sensitivity, promptness and discretion. Open communication and early intervention are essential in preventing and resolving harassment.

Effective date

The effective date of this policy is June 1, 2001.

Policy objective

The purpose of this policy is to foster a respectful workplace through the prevention and prompt resolution of harassment.

Policy statement

Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the Public Service, whether or not they are employees, should enjoy a harassment-free workplace.

Application

This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the *Public Service Staff Relations Act*.

The complaint process as defined in this policy applies to federal public service employees. Though other persons who work for the Public Service cannot access the complaint process described in the policy, managers are nevertheless expected to abide by the spirit of the policy and ensure that their harassment concerns are addressed.

The policy does not apply to complaints from the public. The responsibility for follow-up on such complaints lies with departments/organizations.

Definitions

Harassment (*harcèlement*) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Complaint (*plainte*) - is a formal allegation of harassment submitted in writing to the delegated manager, and which is based on actions defined as *harassment*.

Delegated manager (*gestionnaire délégué*) - is a senior executive designated by the deputy head, accountable for the harassment complaint process.

Mediation (*médiation*) - is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

Policy requirements

- Deputy heads are responsible for fostering a work environment free of harassment.
- All employees must be informed of this policy.
- Learning opportunities related to the *Policy on the Prevention and Resolution of Harassment in the Workplace* must be made available to employees and managers/supervisors.
- Employees must be informed of the name or title and address of the delegated manager (s) in his or her department/organization.
- Early resolution should be used to resolve problems at the outset.
- Mediation must be offered before an investigation is initiated.

- The complaint process, including the investigation if necessary, should be completed without undue delay, normally in six months or less.
- Corrective action must be timely in all situations of harassment, whether it involves employees or other persons working for the Public Service.
- Harassment may result in corrective or disciplinary measures being taken, up to and including termination of employment. Disciplinary or corrective measures may also be taken against the following: any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.
- If a complaint of harassment is determined at the departmental level to be unfounded, and is pursued in the courts or at a tribunal, the respondent's department/organization will provide legal assistance to the respondent.
- Departments/organizations must meet the requirements of this policy.

Responsibility and authority

The ultimate responsibility and authority for applying this policy rests with the deputy head and his or her authorized representative(s).

Expectations

Employees

- (a) Employees are expected to act towards other individuals professionally and respectfully.
- (b) Employees who believe they have been treated in an improper and offensive manner are expected to communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease. They can get help or guidance from the supervisor, the person designated by the department/organization, or the union.
- (c) They can expect to be informed of the Treasury Board policy.
- (d) They can expect prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager.
- (e) They can expect to be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint.
- (f) They will be encouraged to participate in a problem resolution process before proceeding with the

complaint process.

Complainants, respondents and witnesses

- (a) Complainants, respondents and witnesses are expected to provide information as required in the steps noted below under "Complaint process".
- (b) They are expected to co-operate in the complaint process if and when called upon to do so.
- (c) They are expected to limit the discussion of the complaint to those who need to know.
- (d) They can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.
- (e) Complainants and respondents will receive information related to the complaint in writing, including allegations, as noted in the steps below, under "Complaint process", and in accordance with the principles of procedural fairness.
- (f) Complainants and respondents may have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process.
- (g) Complainants and respondents can expect to review a copy of the draft report. They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.
- (h) If the complaint is founded, complainants will be informed verbally whether corrective or disciplinary measures will be taken as a result of their complaint.
- (i) If the complaint is frivolous or in bad faith, respondents will be informed verbally whether corrective or disciplinary measures will be taken.
- (j) Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined at the departmental level to be unfounded, is pursued in the courts or at a tribunal.

Managers

- (a) Managers are expected to lead by example and to act respectfully in dealings with employees and other persons working for the Public Service.
- (b) They can expect to have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution.
- (c) They are expected to ensure that employees are aware of the policy and to remind them of its contents as deemed necessary.

(d) They are expected to ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.

(e) They are expected to intervene promptly when they become aware of improper or offensive conduct and to involve the parties in resolving the problem.

(f) They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.

(g) They are expected to handle all harassment situations confidentially and to ensure that others act accordingly.

(h) They are expected to address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships.

Delegated managers

(a) Delegated managers are expected to be impartial in any complaint process in which they are involved.

(b) They can expect to have access to learning opportunities related to their role and responsibilities as delegated managers.

(c) They are expected to apply the established steps in the complaint process.

(d) They are expected to take the necessary action to ensure the confidentiality of complaints.

(e) They are expected to ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.

(f) They are expected to offer mediation and to ensure that the mediator or co-mediators meet the requirements of the Shared Mediators Program for Cases of Harassment or Conflict in the Workplace;

(g) They are expected to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;

(h) They are expected to assign a mandate to the investigator(s) and ensure that persons conducting investigations are qualified in accordance with the Competencies Profile for Internal and External Harassment Investigators, that they are impartial, that they have no supervisory relationship with the parties, and that they are not in a position of conflict of interest.

(i) They are expected to ensure that corrective and/or disciplinary measures are taken, where warranted.

(j) They are expected to ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.

(k) They are expected to ensure that parties are provided with the information to which they are entitled.

Investigators

(a) Investigators are expected to meet the requirements as outlined in the Competencies Profile for Internal and External Harassment Investigators.

(b) They are expected to apply the principles of procedural fairness.

(c) They are expected to abide by their assigned mandate.

Early problem resolution

The objective of early resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner. The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary. An allegation of harassment is serious. If a person working for the Public Service believes that he or she has been harassed, the following actions should be taken.

The person who feels offended by the actions of another person working for the Public Service is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

Complaint process

The complaint process applies to federal public service employees. Other persons working for the Public Service who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with

the delegated manager. All steps should be completed without undue delay, normally in six months or less. Departments must establish time frames appropriate to their particular organizations, in consultation with their union officials.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

If the allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services as noted above under "Delegated managers", section (f).

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must meet the requirements as noted previously under "Delegated managers", section (h). The investigator must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to proceed to Step 6.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

Resource body

Under an agreement with the Treasury Board of Canada Secretariat, the Public Service Commission will act as an expert resource body by developing programs and providing services to departments in the prevention and resolution of harassment in the workplace, in such areas as training, mediation and investigation.

Other recourse

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, employees have the right to file a complaint with the Canadian Human Rights Commission.

Assaults including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

If a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this policy will not proceed further and the file will be closed.

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Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Is the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*. The prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

The following are some examples, but not an exhaustive list, to clarify what is meant by "harassment".

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> ■ <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. ■ Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> ■ Criticizing an employee in public. 	<ul style="list-style-type: none"> ■ Allocating work. ■ Following-up on work absences. ■ Requiring performance to job standards. ■ Taking disciplinary measures. ■ A <i>single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> ■ <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> ■ Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> ■ Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> ■ Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> ■ Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> ■ Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.
<ul style="list-style-type: none"> ■ Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. ■ Unwelcome sexual advances. 	<ul style="list-style-type: none"> ■ Making sexually suggestive remarks. ■ Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> ■ A social relationship welcomed by both individuals. ■ Friendly gestures among co-workers such as a pat on the back.

Sexual and physical assault are covered by the *Criminal Code*.

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Policy on Harassment Prevention and Resolution

1 Effective Date

1.1 This policy takes effect on October 1st, 2012.

1.2 This policy replaces the following:

- *Policy on the Prevention and Resolution of Harassment in the Workplace (2001)*

2 Application

2.1 This policy applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* unless excluded by specific acts, regulations or Orders in Council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The scope of this policy applies to employee behaviour in the workplace or at any location or any event related to work, including while:

- On travel status,
- At a conference where the attendance is sponsored by the employer,
- At employer sponsored training activities/information sessions, and
- At employer sponsored events, including social events.

3 Context

3.1 The values of the public sector uphold the practice of respect, fairness and courtesy and the importance of demonstrating human dignity within professional relationships. These are also core components of a fair, supportive and ethical workplace as envisaged in the *Policy Framework for People*

Management and the Workplace Policy (under development). Success in the practice of these values foster a safe and healthy workplace free from harassment. When allowed to persist, harassment has adverse effects on the mental health and engagement of employees and on the quality of their work. In a complex and demanding work environment that brings together diverse people and in which collaboration is essential to success, misunderstandings and interpersonal conflicts are inevitable. The organizational culture has an influence on how colleagues interact with one another, and should therefore promote the awareness and practice of good communication and effective interpersonal skills. The ongoing effort to demonstrate respect is everyone's personal responsibility.

Interactions between supervisors and subordinates may be especially sensitive because of the power differential they embody. Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.

Inevitably, there will be occasional instances of conduct that are incompatible with public sector values, and where informal requests for change in behaviours do not succeed. For such situations, a more formal process remains necessary. This policy and the associated Directive on the Harassment Complaint Process should be read in the spirit that early, informal, and less bureaucratic approaches are to be sought, even once a formal process has been engaged.

3.2 This policy stresses the responsibility of deputy heads to protect employees from harassment beyond the requirement of the Canadian Human Rights Act, which forbids harassment on prohibited grounds of discrimination, by requiring deputy heads to act on all forms of harassment. It also responds to the Canada Labour Code Part II and the Canada Occupational Health and Safety Regulations Part XX-Violence Prevention in the Work Place, that require every employer to provide employees with a safe, healthy, and violence-free work environment and dedicate sufficient attention, resources and time to address factors that contribute to workplace violence including bullying, teasing and other aggressive or abusive behaviours. Harassment is a factor that can contribute to the risk of workplace violence and must be promptly and adequately addressed.

3.3 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace and for the prompt resolution of related complaints. This policy provides deputy heads with strategic direction to prevent and manage harassment in the context of creating wide-ranging support for a safe and respectful workplace. It intends to give enough flexibility for tailoring mechanisms and practices to the distinctive operational needs and culture of each organization. Minimum requirements and expectations of all organizations are stipulated in this policy and the associated directive.

3.4 This policy is issued pursuant to Sections 7 and 11.1 of the Financial Administration Act.

3.5 This policy should be read in conjunction with the following:

- Canada Labour Code, including the Canada Occupational Health and Safety Regulations – Part XX dealing with Violence Prevention in the Workplace
- Canadian Human Rights Act
- Values and Ethics Code for the Public Sector
- The principles listed in the Policy Framework for People Management

3.6 Additional mandatory requirements are set out in the:

- Directive on the Harassment Complaint Process

4 Definitions

For definitions to be used in the interpretation of this policy refer to Appendix A.

5 Policy Statement

5.1 Objective

The objective of this policy is to provide deputy heads with strategic directions and set out expected results to foster a respectful workplace and address potential situations of harassment.

5.2 Expected results

The expected results of this policy are that:

5.2.1 Employees have been given ample opportunity to learn about harassment prevention strategies, the harassment complaint process and their right to a harassment free workplace and there are effective incentives for employees and managers to demonstrate a high level of respect for people.

5.2.2 Employees have access to an effective, timely and confidential^[1] harassment resolution process without fear of reprisal, either through informal resolution or a formal harassment complaint process or both;

5.2.3 Employees perceive their work environment as generally fair and respectful.

5.2.4 There is an enhanced collaborative union-management approach on harassment.

6 Policy Requirements

6.1 Deputy heads are responsible for:

6.1.1 Ensuring that preventive activities are in place to foster a harassment-free workplace. These include informing employees about the employer's commitment to fostering a harassment-free workplace and ensuring that results are achieved in a manner that respects employees. Other possible preventive activities are suggested in the Definitions Section- Appendix A.

6.1.2 Optimizing the use of the informal resolution processes and ensuring that those who are involved in managing and resolving harassment complaints have the required competencies, including informal conflict resolution skills.

6.1.3 Regularly consulting with bargaining agents, informal conflict resolution practitioners and other stakeholders on the application of the Directive on the Harassment Complaint Process.

6.1.4 Designating an official or officials for the application of the *Policy on Harassment Prevention*

and Resolution and the Directive on the Harassment Complaint Process.

6.2 Monitoring and reporting requirements

6.2.1 Within organizations

Deputy heads are responsible for monitoring compliance with this policy and its associated directive within their organizations.

6.2.2 By organizations

The achievement of expected results by deputy heads will be assessed by Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS/OCHRO) through data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

Organizations may be required to provide additional information considered necessary for assessing compliance. For example, TBS/OCHRO may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

6.2.3 Government-wide

TBS/OCHRO is responsible for reviewing this policy and its effectiveness at the five-year mark of implementation.

7 Consequences

7.1 Deputy heads are responsible for taking corrective measures when significant issues arise regarding policy compliance. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads take corrective actions and report back on the outcome. Non-compliance with this policy or failure to take actions requested by the Chief Human Resources Officer may result in Treasury Board taking corrective actions.

7.2 For a range of consequences of non-compliance, please refer to the Framework for the Management of Compliance.

8 Roles and responsibilities of government organizations

8.1 In addition to its monitoring role, TBS/OCHRO assists the designated officials with the implementation and application of this policy through the provision of advice and the issuance of related administrative guidelines and tools.

9 References

Other relevant legislations/regulations

- *Access to Information Act*
- *Privacy Act*
- *Public Service Employment Act*
- *Official Languages Act*
- *Public Service Labour Relations Act*

9.2 Related policy instruments/publications

- *Foundation Framework for Treasury Board Policies*
- *Framework for the Management of Compliance*
- *Policy on Official Languages for Human Resources Management*
- *Policy on Language of Work*

Guides

- *Getting to know Informal Conflict Management Systems (ICMS) better*
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10 Enquiries

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Appendix A – Definitions

harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

harassment prevention activities (*activités de prévention du harcèlement*)

activities which aim to reduce the potential for harassment, or perceptions of harassment in the workplace. These may include:

- communicating to all employees the informal and formal processes available to them to resolve issues related to harassment;
- communicating to all employees the departmental resources available such as a harassment prevention advisors, union representatives, Employee Assistance Program counsellors, and informal conflict resolution practitioners;
- informing employees about the employer's commitment to a respectful workplace;
- delivering workshops on harassment prevention, anger management, meaningful conversations, collaborative problem solving, etc.;
- developing communication tools;
- identifying risk factors;
- managing conflicts promptly;
- promoting a culture of self-awareness, collaboration and respect; for example, putting in place 360-degree feedback mechanisms or comparable processes to ensure that results are achieved in a manner that respects employees.
- providing appropriate training and tools to those who are involved in managing and resolving harassment complaints;
- staying vigilant to the workplace climate.

informal resolution process (*processus de résolution informel*)

a confidential and voluntary collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Footnotes

- 1 All parties directly involved in the process are expected to limit the discussions of all aspects pertaining to the complaint to those who need to know.
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Date modified:

2013-06-26



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Schedule 2G

Delegated authority for various human resources policies

1 - TBS Policy on Prevention and Resolution of Harassment in the Workplace

Delegated Manager for Regional Employees	Regional Director General
Delegated Manager for Headquarters Employees	Branch Vice-President

2 - Values and Ethics Code for the Public Service - Conflict of Interest and Post Employment

Review and make decisions	Delegated Level
Employees other than EX	CBSA minus 2

Date Modified: 2008-06-24



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Home > Treasury Board Policy Suite

Policy on Harassment Prevention and Resolution

1 Effective Date

1.1 This policy takes effect on October 1st, 2012.

1.2 This policy replaces the following:

- *Policy on the Prevention and Resolution of Harassment in the Workplace (2001)*

2 Application

2.1 This policy applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the Financial Administration Act unless excluded by specific acts, regulations or Orders in Council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The scope of this policy applies to employee behaviour in the workplace or at any location or any event related to work, including while:

- On travel status,
- At a conference where the attendance is sponsored by the employer,
- At employer sponsored training activities/information sessions, and
- At employer sponsored events, including social events.

3 Context

3.1 The values of the public sector uphold the practice of respect, fairness and courtesy and the importance of demonstrating human dignity within professional relationships. These are also core components of a fair, supportive and ethical workplace as envisaged in the Policy Framework for People Management and the Workplace Policy (under development). Success in the practice of these values will foster a safe and healthy workplace free from harassment. When allowed to persist, harassment has adverse effects on the mental health and engagement of employees and on the quality of their work. In a complex and demanding work environment that brings together diverse people and in which collaboration is essential to success, misunderstandings and interpersonal conflicts are inevitable. The organizational culture has an influence on how colleagues interact with one another, and should therefore promote the awareness and practice of good communication and effective interpersonal skills. The ongoing effort to demonstrate respect is everyone's personal responsibility.

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Inevitably, there will be occasional instances of conduct that are incompatible with public sector values, and where informal requests for change in behaviours do not succeed. For such situations, a more formal process remains necessary. This policy and the associated Directive on the Harassment Complaint Process should be read in the spirit that early, informal, and less bureaucratic approaches are to be sought, even once a formal process has been engaged.

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Appendix A - Definitions

Harassment (*harcèlement*)

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Informal Resolution Process (*processus de résolution informel*)

a confidential and voluntary collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Footnotes

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Accueil > Suite des politiques du Conseil du Trésor

Politique sur la prévention et la résolution du harcèlement

1 Date d'entrée en vigueur

1.1 La présente politique entre en vigueur le 1^{er} octobre 2012.

1.2 Elle remplace la politique suivante :

- *Politique sur la prévention et le règlement du harcèlement en milieu de travail (2001)*

2 Application

2.1 La présente politique s'applique à l'administration publique centrale, dont les organismes nommés à l'annexe I et aux autres secteurs de l'administration publique fédérale nommés à l'annexe IV de la Loi sur la gestion des finances publiques, sauf s'ils en sont exclus en vertu d'une loi, d'un règlement ou d'un décret particulier.

2.2 Les dispositions des sections 6.2.2, 6.2.3 et 7 qui ont trait au rôle du Secrétariat du Conseil du Trésor dans la surveillance de l'observation et l'ordonnance des mesures à adopter dans les cas d'inobservation ne s'appliquent pas au Commissariat à l'information du Canada et au Commissariat à la protection de la vie privée du Canada, au Bureau du directeur général des élections, au Commissariat au lobbying, au Commissariat aux langues officielles et au Commissariat à l'intégrité du secteur public. Les administrateurs généraux de ces organismes sont les seuls responsables de surveiller la présente politique et d'assurer son observation au sein de leur organisme, et de donner suite aux cas d'inobservation, conformément aux instruments du Conseil du Trésor qui établissent les principes et l'orientation de la gestion de l'observation.

2.3 La présente politique porte sur les comportements des employés dans le milieu de travail, pendant un événement ou à un autre endroit lié au travail, y compris :

- pendant un déplacement,
- à une conférence dont la présence est parrainée par l'employeur,
- aux séances et activités de formation parrainées par l'employeur,
- aux autres événements, dont les événements sociaux, parrainés par l'employeur.

3 Contexte

3.1 Les valeurs du secteur public reposent sur le respect, l'équité et la courtoisie ainsi que sur l'importance de faire preuve de dignité humaine dans les relations professionnelles. Elles constituent également des composantes fondamentales d'un milieu de travail juste, favorable et éthique tel que celui préconisé dans le Cadre de politique pour la gestion des personnes et la Politique sur le milieu de travail (en cours d'élaboration). L'application réussie de ces valeurs favorisera la création d'un milieu de travail sain, sûr et sans harcèlement. Le harcèlement a des effets néfastes sur la santé mentale et l'engagement des employés ainsi que sur la qualité de leur travail si aucune mesure n'est prise à cet égard. Dans un milieu de travail complexe et exigeant où travaille un ensemble varié d'employés et où la collaboration est essentielle à la réussite, les malentendus et les conflits interpersonnels sont inévitables. La culture organisationnelle influe sur la façon dont les collègues interagissent; c'est pourquoi elle devrait favoriser la sensibilisation aux

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solides compétences en communication et en relations interpersonnelles et en promouvoir l'adoption. Il incombe à chacun de s'efforcer en tout temps de faire preuve de respect.

Les interactions entre les superviseurs et les subordonnés peuvent être tout particulièrement délicates en raison des divers niveaux d'autorité. Les fonctions de supervision normales telles que l'attribution et l'évaluation du travail ne constituent pas du harcèlement, mais la façon dont ces fonctions sont accomplies peut entraîner une possibilité de harcèlement ou la perception qu'il y a harcèlement.

Il y aura inévitablement des comportements qui seront parfois incompatibles avec les valeurs du secteur public, et des situations où les demandes informelles de changements de comportements échoueront. Dans de tels cas, un processus plus officiel devient nécessaire. Il est important de lire la présente politique et la Directive sur le processus de traitement des plaintes de harcèlement connexe dans l'optique qu'il faut privilégier les méthodes informelles, moins bureaucratiques et appliquées tôt dans le processus de traitement du dossier, et ce, même une fois qu'un processus officiel a été enclenché.

3.2 La présente politique insiste en outre sur la responsabilité des administrateurs généraux de protéger les employés contre le harcèlement, et ce, au-delà de la Loi canadienne sur les droits de la personne, qui interdit le harcèlement fondé sur les motifs de distinction illégitime, en exigeant d'eux qu'ils donnent suite à tout genre de harcèlement. Elle complète également la Partie II du Code canadien du travail et la Partie XX (Prévention de la violence dans le milieu de travail) du Règlement canadien sur la santé et la sécurité au travail, qui obligent tous les employeurs à offrir un lieu de travail sûr, sain et exempt de violence et à accorder l'attention, le temps et les ressources nécessaires à la gestion des facteurs qui contribuent à la violence dans le lieu de travail, notamment l'intimidation, les taquineries et les comportements injurieux ou agressifs. Le harcèlement constitue un facteur contribuant au risque de violence dans le lieu de travail; il doit donc être géré promptement et adéquatement.

3.3 Les administrateurs généraux ont la responsabilité d'établir et de maintenir un milieu de travail respectueux et exempt de harcèlement, de résoudre promptement les plaintes connexes, et d'en rendre compte. La présente politique fournit aux administrateurs généraux l'orientation stratégique nécessaire pour prévenir et gérer le harcèlement en créant de vastes mesures de soutien qui favorisent les conditions propices à un milieu de travail sûr et respectueux. Elle vise à donner suffisamment de flexibilité pour permettre d'adapter les mécanismes et pratiques à la culture et aux besoins opérationnels propres à chaque organisme. Les exigences et attentes minimales pour tous les organismes sont énoncées dans la présente politique et la directive connexe.

3.4 La présente politique est établie conformément aux articles 7 et 11.1 de la Loi sur la gestion des finances publiques.

3.5 Cette politique doit être lue de concert avec les documents suivants :

- Code canadien du travail, y compris la partie XX du Règlement canadien sur la santé et la sécurité au travail relative à la prévention de la violence en milieu de travail
- Loi canadienne sur les droits de la personne
- Code de valeurs et d'éthique du secteur public
- Principes énoncés dans le Cadre de politique pour la gestion des personnes

3.6 Des exigences obligatoires supplémentaires sont énoncées dans le document suivant :

- Directive sur le processus de traitement des plaintes de harcèlement

4 Définitions

Veuillez vous reporter à l'Annexe A pour consulter les définitions à utiliser pour l'interprétation de la présente politique.

5 Énoncé de la politique

5.1 Objectif

La présente politique vise à fournir une orientation stratégique aux administrateurs généraux et à énoncer les résultats escomptés pour créer les conditions propices à un milieu de travail respectueux et gérer les cas potentiels de harcèlement.

5.2 Résultats attendus

Les résultats attendus de la présente politique sont les suivants :

- 5.2.1** Les employés ont eu amplement l'occasion de se familiariser avec les stratégies de prévention du harcèlement, le processus de traitement des plaintes en cas de harcèlement et leur droit de profiter d'un milieu de travail exempt de harcèlement, et il existe des mesures incitatives efficaces pour les employés et les gestionnaires leur permettant de témoigner un grand respect des personnes.
- 5.2.2** Les employés ont accès à un processus de résolution du harcèlement efficace, rapide et confidentiel¹ et sans crainte de représailles, que ce soit par l'entremise d'un processus de résolution informel ou un processus officiel de traitement des plaintes de harcèlement, ou les deux.
- 5.2.3** Les employés perçoivent généralement leur milieu de travail comme juste et respectueux.
- 5.2.4** Il existe un processus syndical-patronal amélioré de collaboration en matière de harcèlement.

6 Exigences de la politique

6.1 Responsabilités des administrateurs généraux :

- 6.1.1** Veiller à ce que des activités de prévention soient en place pour favoriser un milieu de travail exempt de harcèlement. Au nombre de ces activités figurent des mesures pour informer les employés de l'engagement de l'employeur en vue de favoriser un milieu de travail exempt de harcèlement et pour assurer que les résultats sont atteints de manière à respecter les employés. La section des définitions (annexe A) propose d'autres activités de prévention.
- 6.1.2** Maximiser l'utilisation des processus de résolution informelle et veiller à ce que les responsables de la gestion et de la résolution des plaintes de harcèlement possèdent les compétences requises, ce qui comprend des habiletés en résolution informelle des conflits.
- 6.1.3** Consulter régulièrement les agents négociateurs, les spécialistes de la gestion informelle des conflits et d'autres intervenants au sujet de l'application de la Directive sur le processus de traitement des plaintes de harcèlement.
- 6.1.4** Désigner un responsable ou des responsables de l'application de la Politique sur la prévention et la résolution du harcèlement et de la Directive sur le processus de traitement des plaintes de harcèlement.

6.2 Exigences de surveillance et d'établissement de rapports

6.2.1 Au sein des organismes

Il incombe aux administrateurs généraux de surveiller la conformité à la présente politique et à la directive connexe dans leur organisme.

6.2.2 Par les organismes

Le Bureau du dirigeant principal des ressources humaines du Secrétariat du Conseil du Trésor (BDPRH-SCT) se servira d'outils de collecte de données, comme le Sondage auprès des fonctionnaires fédéraux et le Cadre de responsabilisation de gestion.

Les organismes peuvent être tenus de fournir des renseignements supplémentaires considérés comme nécessaires pour évaluer la conformité. Par exemple, le BDPRH-SCT peut mener des groupes de discussion avec les représentants d'organismes désignés, en partenariat avec les agents négociateurs, pour mieux comprendre les défis auxquels sont confrontés les organismes qui obtiennent des résultats relativement faibles.

6.2.3 À l'échelle du gouvernement

Le BDPRH-SCT est tenu d'examiner la présente politique et son efficacité cinq ans après sa mise en œuvre.

7 Conséquences

7.1 Il incombe aux administrateurs généraux de prendre des mesures correctives lorsque d'importants problèmes de conformité à la présente politique surviennent. Si les mesures correctives ne sont pas prises de façon satisfaisante et rapide, le dirigeant principal des ressources humaines peut demander aux administrateurs généraux de prendre des mesures correctives et de rendre compte des résultats. En cas de non-conformité à la présente politique ou d'omission d'apporter les actions demandées par le dirigeant principal des ressources humaines, le Conseil du Trésor pourrait prendre des mesures correctives.

7.2 Pour prendre connaissance de l'éventail des conséquences liées au défaut de conformité, veuillez vous reporter au Cadre stratégique sur la gestion de la conformité.

8 Rôles et responsabilités des organismes gouvernementaux

8.1 Outre son rôle de surveillance, le BDPRH-SCT aide les responsables désignés à mettre en œuvre et à appliquer la présente politique en fournissant des conseils ainsi que des lignes directrices et des outils administratifs connexes.

9 Références

9.1 Autres lois et règlements pertinents

- Loi sur l'accès à l'information
- Loi sur la protection des renseignements personnels
- Loi sur l'emploi dans la fonction publique
- Loi sur les langues officielles
- Loi sur les relations de travail dans la fonction publique

9.2 Instruments de politique/publications connexes

- Cadre principal des politiques du Conseil du Trésor
- Cadre stratégique sur la gestion de la conformité
- Politique sur les langues officielles pour la gestion des ressources humaines
- Politique sur la langue de travail

Guides

- Pour mieux connaître le système de gestion informelle des conflits (SGIC)
- Guide des principaux éléments d'un SGIC
- Guide du gestionnaire sur la prévention et la résolution du harcèlement
- S'agit-il de harcèlement? Outil au service des employés
- Guide d'application du processus de résolution du harcèlement
- Guide d'enquête pour l'application de la Politique sur la prévention et la résolution du harcèlement et la Directive sur le processus de traitement des plaintes de harcèlement
- Guide du gestionnaire sur le rétablissement du milieu de travail à la suite d'une plainte de harcèlement

10 Demandes de renseignements

Pour toute question d'interprétation au sujet de cette politique, les représentants des organismes sont priés de communiquer avec les Demandes de renseignements du SCT. Les employés sont priés de communiquer directement à leurs représentants organisationnels pour toutes questions relatives à cette politique.

Annexe A - Définitions

Activités de prévention du harcèlement (*harassment preventive activities*)

activités qui visent à réduire la possibilité ou la perception de harcèlement dans le milieu de travail, telles que :

- faire connaître à tous les employés les processus officiels et informels à leur disposition pour résoudre des problèmes liés au harcèlement;
- faire connaître à tous les employés les ressources ministérielles offertes, comme les conseillers en prévention du harcèlement, les représentants syndicaux, les conseillers du Programme d'aide aux employés et les spécialistes du processus de résolution informel des conflits;
- informer les employés de l'engagement pris par la direction pour créer un milieu de travail respectueux;
- organiser des ateliers sur la prévention du harcèlement, sur la gestion de la colère, sur les conversations fructueuses, sur la résolution des problèmes par une approche axée sur la collaboration, etc.;
- élaborer des outils de communication;
- relever les facteurs de risque;
- gérer rapidement les conflits;
- promouvoir une culture fondée sur la connaissance de soi, la collaboration et le respect; par exemple, mettre en place des mécanismes de rétroaction à 360 degrés ou des processus similaires afin d'assurer que les résultats sont atteints de manière à respecter les employés.
- fournir une formation et des outils appropriés aux personnes chargées de gérer et de résoudre les plaintes de harcèlement;
- rester à l'affût du climat de travail.

Harcèlement (*harassment*)

comportement inopportun et offensant, d'un individu envers un autre individu en milieu de travail, y compris pendant toute activité ou dans tout lieu associé au travail, et dont l'auteur savait ou aurait raisonnablement dû savoir qu'un tel comportement pouvait offenser ou

causer préjudice. Il comprend tout acte, propos ou exhibition qui diminue, rabaisse, humilie ou embarrasse une personne, ou tout acte d'intimidation ou de menace. Il comprend également le harcèlement au sens de la Loi canadienne sur les droits de la personne (c.-à-d. en raison de la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne gradée).

Le harcèlement est normalement défini comme une série d'incidents mais peut être constitué d'un seul incident grave lorsqu'il a un impact durable sur l'individu.

Processus de résolution informel (informal resolution process)

approche de résolution de problèmes confidentielle et volontaire axée sur la collaboration, telle que les conversations en personne, l'accompagnement en situation de conflits, la discussion facilitée ou la médiation, qui permet de tenir compte des besoins, des préoccupations et des intérêts mutuels des parties. Les processus de résolution informels sont également appelés couramment la résolution de conflits axée sur les intérêts, le système de gestion informelle des conflits (SGIC) ou le mode alternatif de règlement des conflits.

Notes en bas de page

¹ Toutes les parties directement concernées par le processus doivent limiter leurs discussions sur tous les aspects pertinents à la plainte aux personnes qui ont besoin de connaître.

Date de modification :
2013-06-26



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Treasury Board of Canada Secretariat (<http://www.tbs-sct.gc.ca/index-eng.asp>)

Policy on Harassment Prevention and Resolution

1 Effective Date

1.1 This policy takes effect on October 1st, 2012.

1.2 This policy replaces the following:

- *Policy on the Prevention and Resolution of Harassment in the Workplace (2001)*

2 Application

2.1 This policy applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>) unless excluded by specific acts, regulations or Orders in Council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The scope of this policy applies to employee behaviour in the workplace or at any location or any event related to work, including while:

- On travel status,
- At a conference where the attendance is sponsored by the employer,
- At employer sponsored training activities/information sessions, and
- At employer sponsored events, including social events.

3 Context

3.1 The values of the public sector uphold the practice of respect, fairness and courtesy and the importance of demonstrating human dignity within professional relationships. These are also core components of a fair, supportive and ethical workplace as envisaged in the *Policy Framework for People Management* (</pol/doc-eng.aspx?id=19134>) and the *Workplace Policy* (under development). Success in the practice of these values will foster a safe and healthy workplace free from harassment. When allowed to persist, harassment has adverse effects on the mental health and engagement of employees and on the quality of their work. In a complex and demanding work environment that brings together diverse people and in which collaboration is essential to success, misunderstandings and interpersonal conflicts are inevitable. The organizational culture has an influence on how colleagues interact with one another, and should therefore promote the awareness and practice of good communication and effective interpersonal skills. The ongoing effort to demonstrate respect is everyone's personal responsibility.

Interactions between supervisors and subordinates may be especially sensitive because of the power differential they embody. Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.

Inevitably, there will be occasional instances of conduct that are incompatible with public sector values, and where informal requests for change in behaviours do not succeed. For such situations, a more formal process remains necessary. This policy and the associated *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040>) should be read in the spirit that early, informal, and less bureaucratic approaches are to be sought, even once a formal process has been engaged.

3.2 This policy stresses the responsibility of deputy heads to protect employees from harassment beyond the requirement of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>), which forbids harassment on prohibited grounds of discrimination, by requiring deputy heads to act on all forms of harassment. It also responds to the *Canada Labour Code Part II* (http://www.hrsdc.gc.ca/eng/labour/health_safety/overview.shtml) and the *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) Part XX-Violence Prevention in the Work Place, that require every employer to provide employees with a safe, healthy, and violence-free work environment and dedicate sufficient attention, resources and time to address factors that contribute to workplace violence including bullying, teasing and other aggressive or abusive behaviours. Harassment is a factor that can contribute to the risk of workplace violence and must be promptly and adequately addressed.

3.3 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace and for the prompt resolution of related complaints. This policy provides deputy heads with strategic direction to prevent and manage harassment in the context of creating wide-ranging support for a safe and respectful workplace. It intends to give enough flexibility for tailoring mechanisms and practices to the distinctive operational needs and culture of each organization. Minimum requirements and expectations of all organizations are stipulated in this policy and the associated directive.

3.4 This policy is issued pursuant to Sections 7 and 11.1 of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>).

3.5 This policy should be read in conjunction with the following:

- *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>), including the *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace
- *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>)
- *Values and Ethics Code for the Public Sector* (</pol/doc-eng.aspx?id=25049>)
- The principles listed in the *Policy Framework for People Management* (</pol/doc-eng.aspx?id=19134>)

3.6 Additional mandatory requirements are set out in the:

- *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040>)

4 Definitions

For definitions to be used in the interpretation of this policy refer to Appendix A.

5 Policy Statement

5.1 Objective

The objective of this policy is to provide deputy heads with strategic directions and set out expected results to foster a respectful workplace and address potential situations of harassment.

5.2 Expected results

The expected results of this policy are that:

5.2.1 Employees have been given ample opportunity to learn about harassment prevention strategies, the harassment complaint process and their right to a harassment free workplace and there are effective incentives for employees and managers to demonstrate a high level of respect for people.

5.2.2 Employees have access to an effective, timely and confidential⁽¹⁾ harassment resolution process without fear of reprisal, either through informal resolution or a formal harassment complaint process or both;

5.2.3 Employees perceive their work environment as generally fair and respectful.

5.2.4 There is an enhanced collaborative union-management approach on harassment.

6 Policy Requirements

6.1 Deputy heads are responsible for:

6.1.1 Ensuring that preventive activities are in place to foster a harassment-free workplace. These include informing employees about the employer's commitment to fostering a harassment-free workplace and ensuring that results are achieved in a manner that respects employees. Other possible preventive activities are suggested in the Definitions Section- Appendix A.

6.1.2 Optimizing the use of the informal resolution processes and ensuring that those who are involved in managing and resolving harassment complaints have the required competencies, including informal conflict resolution skills.

6.1.3 Regularly consulting with bargaining agents, informal conflict resolution practitioners and other stakeholders on the application of the Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040).

6.1.4 Designating an official or officials for the application of the *Policy on Harassment Prevention and Resolution* and the Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040).

6.2 Monitoring and reporting requirements

6.2.1 Within organizations

Deputy heads are responsible for monitoring compliance with this policy and its associated directive within their organizations.

6.2.2 By organizations

The achievement of expected results by deputy heads will be assessed by Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer)) through data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

Organizations may be required to provide additional information considered necessary for assessing compliance. For example, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

6.2.3 Government-wide

TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) is responsible for reviewing this policy and its effectiveness at the five-year mark of implementation.

7 Consequences

7.1 Deputy heads are responsible for taking corrective measures when significant issues arise regarding policy compliance. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads take corrective actions and report back on the outcome. Non-compliance with this policy or failure to take actions requested by the Chief Human Resources Officer may result in Treasury Board taking corrective actions.

7.2 For a range of consequences of non-compliance, please refer to the *Framework for the Management of Compliance (/pol/doc-eng.aspx?id=17151)*.

8 Roles and responsibilities of government organizations

8.1 In addition to its monitoring role, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) assists the designated officials with the implementation and application of this policy through the provision of advice and the issuance of related administrative guidelines and tools.

9 References

9.1 Other relevant legislations/regulations

- *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html>)
- *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>)
- *Public Service Employment Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.01/>)
- *Official Languages Act* (<http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html>)
- *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>)

9.2 Related policy instruments/publications

- *Foundation Framework for Treasury Board Policies* (/pol/doc-eng.aspx?id=13616)
- *Framework for the Management of Compliance* (/pol/doc-eng.aspx?id=17151)
- *Policy on Official Languages for Human Resources Management* (/pol/doc-eng.aspx?id=12521)
- *Policy on Language of Work* (/pol/doc-eng.aspx?id=12520)

Guides

- *Getting to know Informal Conflict Management Systems (ICMS) better* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/icms-sgic/confplus-eng.asp>)
- *A guide to the key elements of an ICMS (Informal Conflict Management System)* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/icms-sgic/confgui-eng.asp>)
- *Preventing and Resolving Harassment in the Workplace: a Guide for managers* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hars-eng.asp>)
- *Is it Harassment? A Tool to Guide Employees* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/mibh-sjh-eng.asp>)
- *Guide on Applying the Harassment Resolution Process* (/gui/gahrp-gaphr-eng.asp)

- *Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/hig-eng.asp>)
- *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide* (<http://www.tbs-sct.gc.ca/psm-fpfm/healthy-sain/prh/rwfhc-eng.asp>)

10 Enquiries

For interpretation of this policy, departmental officials should contact TBS (Treasury Board of Canada Secretariat) Public Enquiries (</contact/contact-eng.aspx>). Employees should direct enquiries about this policy to their responsible departmental officials.

Appendix A - Definitions

Harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Harassment prevention activities (*activités de prévention du harcèlement*)

activities which aim to reduce the potential for harassment, or perceptions of harassment in the workplace. These may include:

- communicating to all employees the informal and formal processes available to them to resolve issues related to harassment;
- communicating to all employees the departmental resources available such as a harassment prevention advisors, union representatives, Employee Assistance Program counsellors, and informal conflict resolution practitioners;
- informing employees about the employer's commitment to a respectful workplace;

- delivering workshops on harassment prevention, anger management, meaningful conversations, collaborative problem solving, etc.;
- developing communication tools;
- identifying risk factors;
- managing conflicts promptly;
- promoting a culture of self-awareness, collaboration and respect; for example, putting in place 360-degree feedback mechanisms or comparable processes to ensure that results are achieved in a manner that respects employees.
- providing appropriate training and tools to those who are involved in managing and resolving harassment complaints;
- staying vigilant to the workplace climate.

Informal Resolution Process (*processus de résolution informel*)

a confidential and voluntary collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

1 All parties directly involved in the process are expected to limit the discussions of all aspects pertaining to the complaint to those who need to know.

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Treasury Board of Canada Secretariat (<http://www.tbs-sct.gc.ca/index-eng.asp>)

Directive on the Harassment Complaint Process

1 Effective date

1.1 This directive takes effect on October 1st, 2012.

1.2 It is issued in conjunction with the Treasury Board *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041>) dated October 1st, 2012 and both instruments replace the 2001 *Policy on the Prevention and Resolution of Harassment in the Workplace*.

2 Application

2.1 This directive applies to the core public administration which includes organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>) unless excluded by specific acts, regulations or orders in council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board of Canada Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this directive within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The harassment complaint process established under this directive is available to employees of organizations described in 2.1. For individuals who are not employees as defined in *Appendix A*, managers must address any allegation of harassment from these individuals in accordance with the spirit of this directive.

2.4 In circumstances where an employee files a harassment complaint against an individual who is not an employee as defined in Appendix A, managers must apply the complaint process as established in this directive to the extent possible.

3 Context

3.1 The prevention and resolution of harassment in the workplace is an essential component in the effective people management of an organization. The goal of Treasury Board as the employer is to maintain a productive, healthy and respectful workplace where positive working relationships and practices are promoted and where everyone is guided by the values of the public sector which includes treating each other with respect and fairness.

In keeping with the Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041), the Treasury Board is committed to having a harassment-free workplace. In part, this can be achieved by ensuring that every organization remains sensitive to the potential for harassment, or perceptions of harassment in the workplace, and actively managing any such situations whenever and wherever they arise. Requiring organizations across the core public administration to implement measures for preventing and managing workplace harassment will help the employer reduce the effects of stressful work situations on employees, and improve their overall wellbeing and productivity, which in turn will lead to better results for Canadians.

3.2 Harassment is serious and needs to be addressed promptly, with sensitivity, competence and discretion. The primary goal is to resolve allegations of harassment in the most informal way feasible, with the least disruption possible for the parties involved and the work environment. While the seriousness of harassment allegations calls for access to a careful and rigorous process from the outset, it is consistent with such a process that many cases may, upon closer exploration and with the consent of all parties, be effectively dealt with through informal resolution processes.

3.3 This directive flows from the Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041) and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of this directive.

3.4 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace, and for the prompt resolution of related complaints. Treasury Board provides broad direction to deputy heads while the latter are responsible for implementation.

3.5 This directive is issued pursuant to section 7 and subsection 11.1 of the Financial

Administration Act (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>).

3.6 This directive is to be read in conjunction with the following:

- Policy on Harassment Prevention and Resolution (</pol/doc-eng.aspx?id=26041>)
- Canada Labour Code (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>), including the Canada Occupational Health and Safety Regulations (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace
- Canadian Human Rights Act (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>)
- The principles listed in the Policy Framework for People Management (</pol/doc-eng.aspx?id=19134>)

In addition, the guidelines contained in the Guide on Applying the Harassment Resolution Process (</gui/gahrp-gaprh-eng.asp>) should be read in conjunction with this directive as they are fundamental in interpreting and applying efficiently the harassment complaint process.

4 Definitions

For definitions to be used in the interpretation of this directive, refer to Appendix A.

5 Directive Statement

5.1 Objective

The objective of this directive is to describe the minimum requirements of the harassment complaint process and set out expected results in order to ensure the timely and efficient resolution of complaints.

5.2 Expected results

The expected results of this directive are:

5.2.1 Complaints of harassment are handled fairly, confidentially¹, effectively and in a timely manner.

5.2.2 Steps are taken to restore the well-being of the workplace.

6 Requirements

6.1 The designated officials are responsible for the following:

6.1.1 Ensuring that the harassment complaint process is carried out promptly; respects the principles of procedural fairness towards the complainant, the respondent and all other parties involved; and that it contains the following five steps:

Step 1 - Acknowledging receipt of the complaint while ensuring that:

- employees understand that if a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this directive will not proceed further and the file will be closed.
- the written complaint is submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances); and
- the parties are made aware of the options for informal resolution from the outset and throughout the process.

Note: The *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace found in the *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>) should be considered in cases of incidents of violence including alleged threats. Assaults, including sexual assault and criminal harassment are subject to the *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>) and such cases should be promptly referred to the appropriate authorities.

Step 2 - Reviewing the complaint to determine whether the allegation(s) meets the definition of harassment as described in this directive (see *Appendix A*). The respondent is notified of the complaint whether or not the complaint is admissible.

Step 3 - Exploring options for resolving the complaint while ensuring that consideration is given to informal resolution processes. Should there be an investigation², the person conducting the investigation is appropriately qualified³ and applies the principles of procedural fairness.

Step 4 - Rendering a decision and notifying in writing the parties involved as to whether or not the allegations were founded.

Step 5 - Restoring the well-being of the workplace while ensuring that:

- the work unit manager in consultation with the Informal Conflict Resolution practitioners and other relevant organizational resources addresses the needs of the parties concerned and the work unit throughout the complaint process as well as any detrimental impacts resulting from the incidences of harassment; and
- the work unit manager takes timely corrective and/or disciplinary measures, if warranted, including addressing reprisal or risk of reprisal.

6.1.2 Ensuring that steps 1, 2, 3 and 4 are completed in a timely fashion, normally within 12 months unless there are extenuating circumstances, and step 5 is initiated within the same time frame.

For additional information on the application of the steps in the harassment complaint process, consult the [Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)](#).

6.2 Monitoring and reporting requirements

6.2.1 Within Organizations

Consistent with the requirements in section 6.1, the deputy head is responsible for monitoring the performance of the organization with respect to the application and administration of this directive.

6.2.2 By Organizations

The Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer)) is responsible for assessing organizational performance with respect to the administration of and compliance with the requirements herein. The results organizations are expected to achieve may be assessed by data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

As deemed appropriate by TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer), the deputy head may be required to provide information considered necessary for assessing compliance with this directive. For example, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

6.2.3 Government Wide

TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) will review the directive and its effectiveness at the five-year mark of implementation.

7 Consequences

7.1 The deputy head is responsible for taking corrective measures when significant issues arise regarding compliance with this directive. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads temporarily withdraw or suspend delegated authorities to his/her staff, undertake corrective actions or impose measures to restore compliance with this directive.

7.2 For a range of consequences of non-compliance, refer to the *Framework for the Management of Compliance* ([/pol/doc-eng.aspx?id=17151](http://pol/doc-eng.aspx?id=17151)).

8 Roles and Responsibilities of Government Organizations

8.1 In addition to its monitoring role, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) assists the designated officials with the implementation and application of this directive through the provision of advice and the issuance of related administrative guidelines and tools.

9 References

9.1 Other Relevant Legislation/Regulations:

- *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>)
- *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html>)
- *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>)
- *Official Languages Act* (<http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html>)
- *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>)

9.2 Related policy instruments/publications

- *Values and Ethics Code for the Public Sector (/pol/doc-eng.aspx?id=25049)*
- *Framework for the Management of Compliance (/pol/doc-eng.aspx?id=17151)*
- *Policy on Official Languages for Human Resources Management (/pol/doc-eng.aspx?id=12521)*
- *Policy on Language of Work (/pol/doc-eng.aspx?id=12520)*

Guides/Tools:

- *Getting to know Informal Conflict Management Systems (ICMS) better (/gui/confplus-eng.asp)*
- *A guide to the key elements of an ICMS (Informal Conflict Management System) (/gui/confgui-eng.asp)*
- *Is it Harassment? A Tool to Guide Employees (/gui/mibh-sjh-eng.asp)*
- *Guide on Applying the Harassment Resolution Process (/gui/gahrp-gaprh-eng.asp)*
- *Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process (/gui/hig02-eng.asp)*
- *Preventing and Resolving Harassment in the Workplace: a Guide for managers (/gui/hars-eng.asp)*
- *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide (/gui/rwfhc02-eng.asp)*
- *Sample of a Harassment Complaint Form (/tbsf-fsct/hcf-fph-eng.asp)*

10 Enquiries

For interpretation of this directive, departmental officials should contact TBS (Treasury Board of Canada Secretariat) Public Enquiries (/tbs-sct/cmn/contact-eng.asp#enquiries). Employees should direct enquiries about this directive to their responsible departmental officials.

Appendix A - Definitions

Complaint (*plainte*)

is an allegation of harassment communicated verbally or submitted in writing. For the harassment complaint process, a written complaint must be submitted.

Designated Official (*responsable désigné*)

person designated by the deputy head to be responsible for the overall application of the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. The deputy head may designate more than one official in his organization.

Employee (*employé*)

for the purpose of this directive, employee refers to those employed as indeterminate employees, part-time employees, term employees, seasonal employees, casual workers, students and part-time workers in organizations defined in section 2.1.

Harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Informal Resolution Process (*processus de résolution informel*)

a confidential, voluntary and collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Restoration of the workplace (*rétablissement du milieu de travail*)

the establishment or re-establishment of harmonious working relationships amongst individuals and within the team, group or unit, following a harassment complaint.

¹ All parties directly involved in the process are expected to limit the discussion of all aspects of the complaint to those who need to know.

² An investigation may not be necessary if the designated official is satisfied that he has all the facts based on his inquiries and that the parties have been heard in accordance with procedural fairness.

³ Investigators must meet the *Competency Profile for the harassment investigators* ([/pubs.pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp](http://pubs.pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp)).

Directive on the Harassment Complaint Process

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Date Modified:

2013-06-26

JUDGMENTS OF THE SUPREME COURT OF CANADA

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Supreme Court Judgments

Case name: Janzen v. Platy enterprises ltd.

Collection: Supreme Court Judgments

Date: 1989-05-04

Report: [1989] 1 SCR 1252

Case number: 20241

Judges: Dickson, Robert George Brian; Beetz, Jean; McIntyre, William Rogers; Wilson, Bertha; Le Dain, Gerald Eric; La Forest, Gérard V.; L'Heureux-Dubé, Claire

On appeal from: Manitoba

Subjects: Civil procedure

Constitutional law

Notes: SCC Case Information: [20241](#)

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Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252

Dianna Janzen and Tracy Govereau*Appellants*

v.

Platy Enterprises Ltd., and Platy Enterprises Ltd., carrying on business under the firm name and style of Pharos Restaurant, and Tommy Grammas

Respondents

and

Women's Legal Education and Action Fund (LEAF)*Intervener*

indexed as: janzen v. platy enterprises ltd.

File No.: 20241.

1988: June 15; 1989: May 4.

Present: Dickson C.J. and Beetz, McIntyre, Wilson, Le Dain*, La Forest and L'Heureux-Dubé JJ.

on appeal from the court of appeal for manitoba

Civil rights — Employment — Sex discrimination — Sexual harassment — Whether sexual harassment in the workplace is discrimination on the basis of sex — Whether employer liable for employee's actions — Quantum of

damages -- The Human Rights Act, S.M. 1974, c. 65, s. 6(1).

Costs -- Manitoba Human Rights Commission -- Costs should only be ordered against the Commission in exceptional circumstances.

The appellants were employed as waitresses at Pharos Restaurant during the fall of 1982. The restaurant was owned and operated by Platy Enterprises Ltd. and the president of the corporation was the manager of the restaurant. J, during the course of her employment, was sexually harassed by another employee who touched various part of her body and made sexual advances towards her. The offending employee was in charge of the cooking during the evening shift and had no actual disciplinary authority over the waitresses. He nevertheless was represented by himself and by the manager as having control over firing employees. Despite J's objections, this course of conduct persisted for over a month. When the overtly sexual conduct ceased, the employee continued to make the work environment difficult for J by a pattern of uncooperative and threatening behaviour. He was unjustifiably critical of her work and generally treated her in an unpleasant manner. The manager, when informed of the situation, did nothing to put an end to the harassment and J terminated her employment shortly thereafter.

G was the victim of similar behaviour by the same employee. Following a conversation with the manager, the physical harassment ended but it was replaced by a general pattern of verbal abuse by both the manager and the employee who would unjustly criticize her in front of the staff. The harassment culminated with the manager terminating G's employment.

The appellants filed a complaint with the Manitoba Human Rights Commission against Platy Enterprises Ltd., its owners, agents and servants, Pharos Restaurant. The adjudicator found that the appellants had been subjected to persistent and abusive sexual harassment and had been the victims of sex discrimination contrary to s. 6(1) of the *Human Rights Act*. He awarded exemplary damages and damages for loss of wages and found the employee and the employer, Platy Enterprises Ltd., jointly and severally liable. With the exception of the quantum of damages, the Court of Queen's Bench upheld the adjudicator's decision. The Court of Appeal reversed the judgment of the Court of Queen's Bench. The Court held that sexual harassment of the type to which the appellants were subjected was not discrimination on the basis of sex and that the employer could not be held liable for the sexual harassment perpetrated by its employee.

Held: The appeal should be allowed.

Sexual harassment is a form of sex discrimination. Sexual harassment in the workplace is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. By requiring an employee, male or female, to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being. Here, the sexual harassment suffered by the appellants constituted sex discrimination for it was a practice or attitude which had the effect of limiting

the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender.

The fact that only some, and not all, female employees at the restaurant were subject to sexual harassment is not a valid reason to conclude that sexual harassment could not amount to discrimination on the basis of sex. Sex discrimination does not exist only where gender is the sole ingredient in the discriminatory action and where, therefore, all members of the affected gender are mistreated identically. While the concept of discrimination is rooted in the notion of treating an individual as part of a group rather than on the basis of the individual's personal characteristics, discrimination does not require uniform treatment of all members of a particular group. It is sufficient that the ascribing of a group characteristic to an individual is a factor in the treatment of that individual. If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value. In nearly every instance of discrimination the discriminatory action is composed of various ingredients with the result that some members of the pertinent group are not adversely affected, at least in a direct sense, by the discriminatory action. To deny a finding of discrimination in the present circumstances would be to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive. The crucial fact in this case is that it was only female employees who ran the risk of sexual harassment. Indeed, only a woman could be subject to sexual harassment by a heterosexual male, such as the offending employee. A man would not have been subjected to this treatment.

It strains credulity to argue that the sole factor underlying the discriminatory action was appellants' sexual attractiveness -- a personal characteristic -- and that gender was accordingly irrelevant. Sexual attractiveness cannot be separated from gender. These women were subject to a disadvantage because of their being women; no male employee in these circumstances would have been subject to the same disadvantage. Any female considering employment at the restaurant was a potential victim and as such was disadvantaged because of her sex.

The respondent Platy Enterprises Ltd. must be held liable for the actions of its employee given this Court's decision in *Robichaud*. The offending employee was acting in respect of his employment when he sexually harassed the appellants. His actions were clearly work related. His authority, which had been accorded to him by the respondent, and which derived from his control in running the restaurant and his purported ability to fire waitresses, gave him power over the waitresses. Respondent did not meet its responsibility to ensure that this power was not abused, even after the appellants made specific complaints.

The Court of Queen's Bench should not have reduced the award of damages given to the appellants. The amounts were not inordinate in light of the seriousness of the complaints.

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Applied: *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, rev'g [1984] 2 F.C. 799 (C.A.), rev'g

(1983), 4 C.H.R.R. D/1272 (H.R. Rev. Trib.), rev'g (1982), 3 C.H.R.R. D/977 (H.R. Trib.); *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 000; **referred to:** *Hufnagel v. Osama Enterprises Ltd.* (1982), 3 C.H.R.R. D/922; *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858; *Olarte v. DeFilippis* (1983), 4 C.H.R.R. D/1705; *Giouvanoudis v. Golden Fleece Restaurant* (1984), 5 C.H.R.R. D/1967; *Bell v. Ladas* (1980), 1 C.H.R.R. D/155; *Re Dakota Ojibway Tribal Council and Bewza* (1985), 24 D.L.R. (4th) 374; *Kotyk v. Canadian Employment and Immigration Commission* (1983), 4 C.H.R.R. D/1416; *Phillips v. Hermiz* (1984), 5 C.H.R.R. D/2450; *Doherty v. Lodger's International Ltd.* (1981), 3 C.H.R.R. D/628; *Coutroubis v. Sklavos Printing* (1981), 2 C.H.R.R. D/457; *Hughes v. Dollar Snack Bar* (1981), 3 C.H.R.R. D/1014; *Cox v. Jagbritte Inc.* (1981), 3 C.H.R.R. D/609; *Mitchell v. Traveller Inn (Sudbury) Ltd.* (1981), 2 C.H.R.R. D/590; *Deisting v. Dollar Pizza (1978) Ltd.* (1982), 3 C.H.R.R. D/898; *McPherson v. Mary's Donuts* (1982), 3 C.H.R.R. D/961; *Johnstone v. Zarankin* (1985), 6 C.H.R.R. D/2651 (B.C.S.C.), aff'd (1984), 5 C.H.R.R. D/2274 (B.C. Bd.); *Foisy v. Bell Canada* (1984), 6 C.H.R.R. D/2817; *Commodore Business Machines Ltd. v. Ontario Minister of Labour* (1984), 6 C.H.R.R. D/2833; *Re Mehta and MacKinnon* (1985), 19 D.L.R. (4th) 198; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114; *Barnes v. Costle*, 561 F.2d 983 (1977); *Bundy v. Jackson*, 641 F.2d 934 (1981); *Henson v. Dundee*, 682 F.2d 897 (1982); *Meritor Savings Bank v. Vinson*, 106 S. Ct. 2399 (1986); *Porcelli v. Strathclyde Regional Council*, [1985] I.C.R. 177 (E.A.T. (Scot.)), aff'd [1986] I.C.R. 564 (Ct. of Session).

Statutes and Regulations Cited

Canada Labour Code, R.S.C., 1985, c. L-2, s. 247.1 [am. c. 9 (1st Supp.), s. 17].

Civil Rights Act of 1964, 78 Stat. 241, {SS} 703.

Human Rights Act, S.M. 1974, c. 65, s. 6(1) [am. 1976, c. 48, s. 6; am. 1977, c. 46, ss. 2, 3; am. 1982, c. 23, s. 9], 19(4) [en. 1978, c. 43, s. 4], 20 [am. 1976, c. 48, s. 14], 28 [rep. & subs. 1976, c. 48, s. 18; am. 1982, c. 23, s. 24].

Human Rights Code, 1981, S.O. 1981, c. 53, s. 6.

Human Rights Code, S.M. 1987-88, c. 45, s. 19.

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APPEAL from a judgment of the Manitoba Court of Appeal (1986), 43 *Man. R.* (2d) 293, 33 *D.L.R.* (4th)

32, [1987] 1 W.W.R. 385, 87 CLC {PP} 17,014, 8 C.H.R.R. D/3831, setting aside the judgment of Monnin J. (1985), 38 Man. R. (2d) 20, 24 D.L.R. (4th) 31, [1986] 2 W.W.R. 273, 86 CLC {PP} 16,009, 7 C.H.R.R. D/3309, which affirmed in part the decision of a Board of Adjudication (1985), 6 C.H.R.R. D/2735. Appeal allowed.

Aaron L. Berg and *G. Hannon*, for the appellants.

No one appeared for the respondents.

Louise Lamb, for the intervener.

//The Chief Justice//

The judgment of the Court was delivered by

THE CHIEF JUSTICE -- On January 24, 1983, Dianna Janzen made a complaint to the Human Rights Commission of Manitoba against Platy Enterprises Ltd., its owners, agents and servants, Pharos Restaurant. The complaint reads:

I am a female resident of Manitoba.

I was employed as a waitress at the Pharos Restaurant, located at 9 St. Mary's Road, from August to October, 1982. I was hired by Phillip Anastasiadis, who I believe is part owner of the restaurant.

During my period of employment at the restaurant, I was continuously sexually harassed by Tommy, the cook. On many occasions Tommy grabbed my legs and touched my knee, bum and crotch area. When I resisted his sexual advances, he told me to shut up or he would fire me. He began to yell at me in front of staff and criticize my work.

During the second week of October 1982 I spoke to Phillip about Tommy's behaviour. He told me he couldn't do anything about it. Under the circumstances I felt I had no alternative but to quit my job effective October 31st, 1982.

I believe I have been subjected to discriminatory terms and conditions of employment and that I have been discriminated against because of my sex contrary to Section 6 of The Human Rights Act.

Five days later, on January 29, 1983, Tracy Govereau made a complaint of a similar nature against the same parties, alleging sexual harassment by "Tommy, the cook".

The main issue in this appeal is whether sexual harassment in the workplace is discrimination on the basis of sex, and therefore prohibited by s. 6(1) of the Manitoba *Human Rights Act*, S.M. 1974, c. 65.

I

Facts

The appellants, Dianna Janzen and Tracy Govereau, were employed as waitresses at Pharos Restaurant in Winnipeg, during the fall of 1982. The restaurant and two others of like name were owned and operated by the

corporate respondent Platy Enterprises Ltd. The president of the corporation, Eleftherois (also known as Phillip) Anastasiadis, was the manager of the restaurant and the cook at the restaurant on the first shift. The respondent, Tommy Grammas, was the cook during evening shifts. He did not have an ownership interest in the restaurant, nor was he an officer of the corporation. Although Grammas had no actual disciplinary authority over the waitresses, he was represented by himself and by Anastasiadis as having control over firing employees.

The appellant Janzen was employed at the restaurant from August 21, 1982 until October 31, 1982. Approximately two to three weeks after she commenced her employment, the respondent Grammas began engaging in unwelcome conduct of a sexual nature. He began to make sexual advances towards her. Often this touching occurred when Janzen was burdened with duties as a waitress and unable to defend herself. Despite Janzen's clear and repeated objections to Grammas' behaviour, this course of conduct persisted for over a month.

Dianna Janzen's troubles did not end when the overtly sexual conduct ceased. Grammas continued to make the work environment difficult for her by a pattern of uncooperative and threatening behaviour. He was unjustifiably critical of her work, refused to respond co-operatively to her food orders and generally treated her in an unpleasant manner. Towards the middle of October, Janzen endeavoured to speak to Anastasiadis about Grammas' behaviour. Anastasiadis was unable to talk to her at the time, but according to Janzen's testimony, he said "If it is about Tommy, I can't do anything about it." At a second meeting in late October, Janzen described to Anastasiadis in detail the conduct to which she had been subjected. His reaction was unsympathetic. Janzen's evidence was that Anastasiadis treated the matter lightly and insinuated she was responsible for Grammas' conduct. Anastasiadis admits to telling Janzen she was over-reacting. Anastasiadis made no attempt to put an end to the harassment and, shortly after her discussion with him, Janzen terminated her employment. She was out of work for one month before finding employment at another restaurant. She gave evidence, accepted by the adjudicator, that the physical and emotional consequences of the harassment she endured included insomnia, vomiting and inability to concentrate.

The appellant Govereau was a waitress at Pharos restaurant from October 13, 1982 to December 11, 1982. At the end of her first week of employment, Grammas approached her and kissed her on the mouth. From that point onwards, Grammas repeatedly grabbed Govereau and attempted to kiss her. He constantly touched various parts of her body, including her stomach and breasts. On one occasion, when Govereau was washing dishes in the kitchen, Grammas came up behind her, put his hands under her sweater and attempted to fondle her breasts. Grammas also harassed Govereau verbally, commenting frequently and inappropriately on her appearance. Grammas' conduct persisted despite forceful objections.

As a result of conversations with another waitress at the restaurant, Carol Enns, Govereau decided to raise the matter with Anastasiadis. In mid-November she met with Anastasiadis and discussed Grammas' behaviour for approximately fifteen minutes. According to Govereau's testimony, Anastasiadis did not seem particularly surprised or perturbed by the situation. At one point during the conversation he asked Govereau why she let

Grammas treat her that way. After Govereau's discussion with Anastasiadis, the physical harassment of her by Grammas came to an end. It was replaced, however, by a general pattern of verbal abuse by both Grammas and Anastasiadis. Govereau maintained that she was unjustly criticized by the two men and that both of them would yell at her in front of the other staff for no reason. There had been no criticism of her work prior to her decision to complain about Grammas. Govereau's testimony was supported by Carol Enns. The harassment culminated with Anastasiadis terminating Govereau's employment on December 8, 1982, ostensibly as a result of a customer complaint. Govereau worked three additional days, until December 11. She was unable to find alternative employment until August 1983. Govereau testified that as a result of the harassment by Grammas and Anastasiadis she "felt dirty, wasn't relaxed, couldn't sleep or concentrate in class".

As I have mentioned, both Janzen and Govereau filed complaints with the Manitoba Human Rights Commission alleging that they had been victims of discrimination on the basis of sex contrary to s. 6(1) of the *Human Rights Act*.

Grammas' employment at Pharos Restaurant was terminated before the hearing of the complaints and he did not participate in any of the proceedings.

II

Legislation

The Human Rights Act, S.M. 1974, c. 65, as amended, reads:

6 (1) Every person has the right of equality of opportunity based upon bona fide qualifications in respect of his occupation or employment or in respect of training for employment, or in respect of an intended occupation, employment, advancement or promotion, and in respect of his membership or intended membership in a trade union, employers' organization or occupational association; and, without limiting the generality of the foregoing

(a) no employer or person acting on behalf of an employer shall refuse to employ, or to continue to employ or to train the person for employment or to advance or promote that person, or discriminate against that person in respect of employment or any term or condition of employment;

(b) no employment agency shall refuse to refer a person for employment; or for training for employment; and

(c) no trade union, employers' organization or occupational association shall refuse membership to, expel, suspend or otherwise discriminate against that person; or negotiate, on behalf of that person, an agreement that would discriminate against him;

because of the race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, or political beliefs or family status of that person.

28 (1) Where the board of adjudication decides that there has been no contravention of the Act by any party, it shall dismiss the complaint.

28 (2) Where the board of adjudication decides that a party has contravened any provision of the Act, it may do one or more of the following things:

(b) Make an order requiring the party who contravened the Act to compensate the person discriminated against for all, or such part as a board may determine, of any wages or salary lost or expenses incurred by reason of the contravention of this Act;

(c) Order the person who contravened the Act to pay to the person discriminated against, a penalty or exemplary damages in such amount as the board may determine, if the board is of the

opinion that the person discriminated against suffered damages in respect of his feelings, or self-respect.

In 1987, subsequent to the adjudication of the complaints of Janzen and Govereau, the Manitoba *Human Rights Act* was repealed and replaced with *The Human Rights Code*, S.M. 1987-88, c. 45. Section 19 of the new *Human Rights Code* expressly prohibits sexual discrimination in the workplace:

19 (1) No person who is responsible for an activity or undertaking to which this Code applies shall

- (a) harass any person who is participating in the activity or undertaking; or
- (b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

19 (2) In this section "harassment" means

- (a) a course of abusive or unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or
- (b) a series of objectionable and unwelcome sexual solicitations or advances; or
- (c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

III

Judgments Below

1. *The Adjudication Board*

The complaints were heard by Adjudicator Henteleff. In a comprehensive decision of some 144 pages, rendered April 26, 1985 and reported at (1985), 6 C.H.R.R. D/2735, the adjudicator found that both Janzen and Govereau had been victims of sex discrimination. Much of the decision is devoted to preliminary matters which are not at issue in this Court. Adjudicator Henteleff conducted a thorough review of the evidence and concluded that the appellants had been subjected to persistent and abusive sexual harassment. He made the following finding in respect of Janzen, at p. D/2768:

Further, I find that the cumulative effect of the physical and mental harassment that she had been subjected to created an intolerable work environment for her. She was justified in coming to the conclusion, as she did following her conversation with Phillip immediately prior to her terminating her employment, that there was very little likelihood, if any, that the situation would be rectified. Accordingly, I further find that the cumulative effect of such acts of harassment, sexual as well as mental, and the attitude of the employer as above described amounted to constructive dismissal (see *Cox and Cowell v. Jagbitte Inc. et al.* (1982) 3 C.H.R.R. D/609 (Peter A. Cumming) at paras. 5593 and 5594).

and in respect of Govereau, at p. D/2768:

Based on all of the evidence I have no doubt in concluding that the individual respondent, Tommy, was guilty of sexual harassment of Tracy Govereau. The specific acts, of which she complained, consisted of unwanted sexual acts of a persistent and abusive nature. Her evidence, which I accept, also clearly established that Tommy knew or ought to have known that such acts were

unwanted. It is clear from the evidence that Tommy made a variety of sexual advances including touching the complainant for sexual reasons, and that he persisted in this conduct even though it is obvious from her evidence that she forcibly rejected his actions. She impressed me as a truthful witness. Moreover, her evidence was corroborated in all essential respects by her co-worker, Carol Elizabeth Enns. Furthermore, I find that there was additional corroboration of Ms. Govereau's evidence as to Tommy by virtue of the similar acts committed by Tommy on the complainant, Dianna Janzen.

The question of whether sexual harassment could amount to sex discrimination prohibited by the Manitoba statute was not raised before the arbitrator by either counsel. As there was no dispute on the point, the adjudicator was content to cite six authorities for holding that sexual harassment is sex discrimination; *Hufnagel v. Osama Enterprises Ltd.* (1982), 3 C.H.R.R. D/922 (Man. Bd.); *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858 (Ont. Bd.); *Olarte v. DeFilippis* (1983), 4 C.H.R.R. D/1705 (Ont. Bd.); *Giouvanoudis v. Golden Fleece Restaurant* (1984), 5 C.H.R.R. D/1967 (Ont. Bd.); and *Robichaud v. Brennan* (1982), 3 C.H.R.R. D/977; Review Tribunal (1983), 4 C.H.R.R. D/1272, and on appeal to the Federal Court of Appeal which gave its judgment dated 18th day of February, 1985, [1984] 2 F.C. 799. The adjudicator accepted the definition of sexual harassment quoted by Professor Cumming in *Giouvanoudis v. Golden Fleece Restaurant*, *supra*, at para. 16819, as follows:

From a factual standpoint, sexual harassment can be considered to include:

Unwanted sexual attention of a persistent or abusive nature, made by a person who knows or ought reasonably to know that such attention is unwanted;

... or

Implied or expressed threat or reprisal, in the form either of actual reprisal or the denial of opportunity for refusal to comply with a sexually oriented request;

... or

Sexually oriented remarks and behaviour which may reasonably be perceived to create a negative psychological and emotional environment for work.

Adjudicator Henteleff concluded that Grammas' conduct violated s. 6(1) of the *Human Rights Act*.

The adjudicator made a number of findings of fact with respect to the position and responsibilities of Grammas at the restaurant and to Anastasiadis' knowledge of the existence of the harassment. He found: (1) that Grammas decided which of the waitresses went home early or stayed at work depending on the amount of business in the restaurant; (2) that in the absence of Anastasiadis, Grammas handled any problems with food quality or service; (3) that the staff had the clear and justifiable impression that Grammas was next in line in authority to Anastasiadis, and that he was in charge when Anastasiadis was absent; (4) that Grammas could clear cash from the till; and (5) that Grammas had advised both of the appellants that he could fire them and that even though this was not the case, his authority to terminate the appellants' employment was confirmed by Anastasiadis. Anastasiadis testified that he had told the waitresses Grammas had firing authority because (at p. D/2758) "the girls had to have somebody to be kind of afraid of or respect or whatever". The adjudicator also found that Anastasiadis was aware of the harassment of the appellants, that he failed to take any reasonable steps to ensure that the workplace was free from sexual harassment, and that he actively participated in the verbal harassment of the appellant Govereau.

The adjudicator also considered the liability of the corporate respondent, Platy Enterprises Ltd., for breaches of the *Human Rights Act* committed by Grammas. Adjudicator Henteleff reviewed earlier decisions of human rights tribunals, as well as the decision of the Federal Court of Appeal in *Robichaud*, before concluding that the corporate respondent was liable for the violations. The adjudicator appears to have found Platy Enterprises Ltd. liable both on the principle of vicarious liability and on the organic theory of corporate liability. He remarked (at p. D/2753):

The clear intent of Sec. 6(1), in respect of areas of discrimination arising therefrom, is not only to make the employer liable for any acts of sexual harassment directly committed by such employer, but also makes him responsible for any such acts committed by a person in authority during the course of his employment.

The adjudicator stated at p. D/2768:

After consideration of all of the evidence, it is my conclusion that Tommy was a person in such authority that his acts became those of his employer, Platy. The complainant Janzen was made aware of this to the extent that Tommy was in such a preferred position, that if she subjected herself to sexual harassment, she was to blame for it. Accordingly such harassment had become a condition of her continued employment since Phillip either couldn't or wouldn't do anything about it. (See *McPherson et al v. Mary's Donuts and Doschoian* (1982) 3 C.H.R.R. D/961 (Peter A. Cumming) and particularly at paras. 8549 to 8558, both inclusive.)

The adjudicator did not consider himself to be bound by the decision of the Federal Court of Appeal in *Robichaud* which restricted vicarious liability of a corporation to acts of sexual harassment committed by the corporation's directors or officers. Adjudicator Henteleff interpreted the majority judgment as dealing solely with the question of vicarious liability in a complaint against the Crown and as having no application to private employers. The decision of the Federal Court of Appeal on the issue of liability was later reversed on appeal to this Court (*Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84).

Adjudicator Henteleff found Grammas and Platy Enterprises Ltd. jointly and severally liable to the complainants. He awarded Janzen the sum of \$480 for lost wages and \$3,500 in exemplary damages, and Govereau the sum of \$3,000 for lost wages and \$3,000 exemplary damages. In arriving at the quantum of exemplary damages, the adjudicator noted that both Janzen and Govereau had been subjected to physical and mental harassment of a severe nature and that the harassment had had a substantial psychological impact on both women. With respect to Janzen he said, at p. D/2771:

I further find that she was subject to physical and mental harassment which was of a most severe nature. I further find that the harassment was close to being constant throughout her period of employment. I find also that by virtue of her age (21) and her particular situation (including trying to be self-supporting for the first time), she was particularly vulnerable with the result that the cumulative effect of the harassment had a very substantial psychological impact upon her, and suffered damage in respect of feelings and self-respect.

and with respect to Govereau, also at p. D/2771:

I further find that she was subject to physical and mental harassment which although severe and frequent, was not of the same degree as that suffered by Ms. Janzen. I find that by virtue of her situation (including attending University and her particular need of this part-time job) that the cumulative effect of the harassment had a substantial psychological impact upon her and she suffered damages in respect of feelings and self-respect.

The award to Janzen was greater than the award to Govereau, as the harassment Janzen endured was more severe.

The decision concluded, at p. D/2772 by directing Platy Enterprises Ltd.:

Further and under the direction of the Manitoba Human Rights Commission, and within such time as the Commission determines, to establish and maintain in all of its restaurant premises such program as will reasonably assure such restaurant premises will remain free of sexual harassment.

2. *The Manitoba Court of Queen's Bench*

Platy Enterprises Ltd. appealed the decision of Adjudicator Henteleff. With the exception of the quantum of damages, Monnin J. upheld the adjudicator's decision: (1985), 38 Man. R. (2d) 20, 24 D.L.R. (4th) 31, [1986] 2 W.W.R. 273, 86 CLLC {PP} 16,009, 7 C.H.R.R. D/3309 (hereinafter cited to C.H.R.R.) Monnin J. began by noting that the question whether Janzen and Govereau had been sexually harassed was not before the court, counsel for the appellant having admitted that Grammas was guilty of sexual harassment. He then turned to consider whether sexual harassment is a form of sex discrimination prohibited by s. 6(1) of the *Human Rights Act*. Monnin J. rejected Platy Enterprises Ltd's argument that the term sex discrimination as used in the Manitoba statute was not intended to apply to activities of an individual directed against a particular individual, rather than against an entire identifiable group. Instead, he accepted the result and the reasoning of Adjudicator Shime in *Bell v. Ladas* (1980), 1 C.H.R.R. D/155 (Ont. Bd.), who held that sexual harassment did amount to discrimination on the basis of sex.

Monnin J. also rejected Platy Enterprises Ltd.'s argument that the amendments enacted by some provinces to prohibit specifically sexual harassment in their human rights legislation was to be construed as an indication that the term sex discrimination did not encompass sexual harassment.

Monnin J. next considered the liability of Platy Enterprises Ltd. for the actions of its employee, Grammas. He began by absolving Anastasiadis from any participation in the sexual harassment of Janzen and Govereau and from condoning Grammas' behaviour. In spite of his conclusion that Anastasiadis was not personally responsible for Grammas' conduct, Monnin J. continued to find Platy Enterprises Ltd. liable for sexual harassment (at p. D/3314):

... I have no hesitation in finding, as did the adjudicator, that whether or not, in reality, Grammas had any power over the staff of the restaurant, the staff was purposefully led to believe by Anastasiadis that he did. In point of fact, Grammas might well not have been a directing mind of respondents [*sic*] but the perception given to the employees is what must be a determining factor ...

By the admission of Anastasiadis, respondents [*sic*] have placed Grammas in a position of authority over the staff and therefore the complainants. By seemingly proffering this authority upon Grammas, respondents [*sic*] must be and are bound by his actions. Liability for Grammas' sexual harassment of complainants therefore extends to respondents [*sic*].

On the issue of damages, Monnin J. said, at pp. D/3314-15:

Section 28(2) of the *Act* empowers a board of adjudication to compensate a person who has been discriminated against for any wages or salary lost as a result of a contravention of the *Act* as well as ordering payments of a penalty or exemplary damages if a person who has been discriminated against has suffered damages in respect of feelings or self-respect.

In this particular case the board of adjudication found that complainant Janzen suffered a one month loss of income and awarded her \$480.00 in lost wages. I have little difficulty in upholding this finding. As to complainant Govereau however, the board of adjudication found a loss of income of approximately 6 months and awarded damages in the amount of \$3,000.00 for such loss. I am not satisfied that the evidence warrants this finding. There is little evidence of what if any attempts complainant Govereau made to secure other employment. There is evidence that she was embarrassed by her firing from Pharos and that this caused her some difficulties in seeking out employment. I do not question this, but an award of damages and not compensation for loss of wages is the proper remedy for this state of affairs. Even by giving complainant Govereau every benefit of the doubt, I cannot justify an award for loss of wages in excess of one month or \$500.

I am now left with the issue of punitive or exemplary damages. This is a difficult concept with which to deal because the court must attempt to quantify feelings or self-respect. The concept itself is difficult to rationalize and even more so when it is of a nature with which courts do not normally deal with. Notwithstanding that human rights legislation is a new and specialized area of law, awards of damages in one area of law must maintain a certain balance with fines meted out in criminal or quasi criminal matters and damages awarded in general civil cases. Not to maintain this general balance will too easily bring into question the principle of equal justice for all. I fully realize and accept that the conduct of Grammas was demeaning and traumatic for both complainants. What must be realized however is that victims of criminal acts or persons wrongfully dismissed from their employment or injured by the conduct of others also have their feelings and self-respect attacked. This type of loss is not the sole preserve and domain of persons who have suffered discrimination. A loss based on discrimination cannot be assessed in a vacuum. Such a loss must be looked at in the context of damages in law as a whole.

Bearing those comments in mind, I find the complainant Janzen is entitled under s. 28(2)(c) of the *Act* to an award of \$1,000.00 while complainant Govereau is entitled to an award of \$1,500.00. I have awarded Govereau an amount greater than Janzen because the evidence has convinced me that her feelings and self-respect were dealt a more severe attack by the actions of Grammas than were the feelings and self-respect of Janzen.

Thus Monnin J. reduced the award for lost wages to Govereau from \$3,000 to \$500 because of insufficient evidence of her efforts to secure alternative employment and reduced the exemplary damage awards to Janzen and Govereau to \$1,000 and \$1,500 respectively.

3. *The Manitoba Court of Appeal*

Platy Enterprises Ltd. appealed the decision of Monnin J. and Janzen and Govereau cross-appealed on the quantum of damages. The Manitoba Court of Appeal (Matas, Huband and Twaddle J.J.A.) allowed the appeal: (1986), 43 Man. R. (2d) 293, 33 D.L.R. (4th) 32, [1987] 1 W.W.R. 385, 87 CLLC {PP} 17,014, 8 C.H.R.R. D/3831 (hereinafter cited to C.H.R.R.) Huband J.A. and Twaddle J.A. rendered comprehensive separate reasons which I will review at some length because, with the greatest respect, I do not agree with them. Both held that sexual harassment could not constitute discrimination on the basis of sex. Due to his untimely death, Matas J.A. did not participate in the reasons for judgment.

Huband J.A. began by expressing his amazement that sexual harassment had been equated with discrimination on the basis of sex, and that an employer could be held vicariously responsible for the harassing conduct of an employee. He stated (at p. D/3832):

I am amazed to think that sexual harassment has been equated with discrimination on the basis of sex. I think they are entirely different concepts. But adjudicators under human rights legislation, legal scholars and writers, and jurists have said that the one is included in the other.

Assuming sexual harassment to be a form of sexual discrimination, I am amazed to think that an employer

could be held vicariously responsible for that form of discrimination on the part of an employee, or that a corporate employer could be found "personally responsible" for a sexually malevolent employee, except under the rarest of circumstances. Yet adjudicators, legal scholars, and judges have said otherwise.

Huband J.A. noted the line of cases in which both judges and adjudicators had found sexual harassment to be a form of sex discrimination but stated that these decisions were wrong.

Huband J.A. adopted two of the three meanings assigned to the word "discriminate" in *The Shorter Oxford English Dictionary* (3rd ed.): "1. To make or constitute a difference in or between; to differentiate . . .; 3. To make a distinction"; and concluded, "In this *Act* discrimination is a violation of the law. The word 'discriminate' used in a pejorative sense, means an unjustified differentiation or distinction."

Sexual harassment, in the view of Huband J.A., embraced an entirely different concept, stating (at p. D/3834):

The word "harass" is given several definitions in *The Shorter Oxford English Dictionary*, the most pertinent for our purposes being to harry, or to trouble or vex by repeated attacks. Sexual harassment involves vexing or troubling a person with respect to sexual matters such as repeatedly touching or making suggestions, or threats.

Sexual harassment is not socially acceptable conduct. Depending on the nature of it, it might constitute a criminal offence or a civil wrong under the common law. But I cannot understand how it can be equated with sexual discrimination.

Although he recognized that sexual harassment was not socially acceptable conduct, Huband J.A. cited the following example to illustrate how it could not be viewed as sex discrimination (at p. D/3834):

When a schoolboy steals kisses from a female classmate, one might well say that he is harassing her. He is troubling her; vexing her; harrying her -- but he surely is not discriminating against her.

Huband J.A. next examined the meaning of discrimination in s. 6(1) of the *Human Rights Act*. He discussed each of the clauses of s. 6(1) and concluded that the section as a whole was aimed at discrimination in a generic sense. He gave the following examples of generic discrimination: discriminating against Blacks as a group, Jehovah's Witnesses as a group, or women as a group. In Huband J.A.'s view, discrimination in the generic sense could not include sexual harassment, presumably because not all women were the victims of sexual harassment.

Even though his finding on the issue of sex discrimination rendered consideration of corporate liability unnecessary, Huband J.A. examined this issue. He noted that he did not believe Grammas could be held liable under the *Human Rights Act*, as he interpreted the statute to apply only to employers and not to fellow employees. Unlike Adjudicator Henteleff, Huband J.A. considered himself bound by the decision of the Federal Court of Appeal in *Robichaud, supra*, where the court held that absent a provision in the relevant human rights statute for the imposition of vicarious or strict liability, an employer could not be held vicariously liable for the actions of an employee, except where an employee was acting on behalf of an employer. No such foundation for vicarious liability could be found in the Manitoba *Human Rights Act*. Huband J.A. was firmly

of the view that Platy Enterprises Ltd. could not be held liable for Grammas' conduct as Grammas was not acting on behalf of the employer corporation.

Huband J.A. proceeded to examine the second ground on which the adjudicator held Platy Enterprises Ltd. liable, the organic theory of corporate responsibility. On this theory, a corporation could be liable for wrongful acts of an employee where the corporation adopts or approves of the employee's wrongful acts or where an officer or official of the corporation is given the authority to originate the corporation's policies and to implement them. Huband J.A. was of the view that liability could not be founded on the organic theory for two reasons. First, Grammas was not the directing mind of the corporation. Second, Grammas did not commit the acts of harassment in the course of employment. In Huband J.A.'s view, an employer could only be held liable for the acts of negligent employees where the employees were acting within their authorized capacity. In the case of a cook, Huband J.A. explained that this authority would extend to the preparation of food and the maintenance of safe conditions in the kitchen, but would not encompass acts of sexual harassment (at p. D/3841):

If the cook dumped too much pepper in the soup, he would clearly be acting in the course of his employment, trying, albeit negligently, to prepare and present a decent meal. If the cook, contrary to instruction, was smoking on the job, and as a result negligently caused a gas explosion in the kitchen, it would be arguable that he was still acting in the course of his employment in the sense that he was trying to fulfil his responsibilities as a cook. But what has patting the buttocks of a waitress to do with fulfilling the responsibilities as a cook?

Huband J.A. concluded that even if Grammas' actions did violate the *Human Rights Act*, Platy Enterprises Ltd. could not be held liable on either theory of corporate liability.

Finally, Huband J.A. briefly discussed the issue of damages. He stated that Monnin J. was correct in reducing the damage awards of the adjudicator in keeping with the decision of the Manitoba Court of Appeal in *Re Dakota Ojibway Tribal Council and Bewza* (1985), 24 D.L.R. (4th) 374.

Like Huband J.A., Twaddle J.A. was emphatic in his view that sexual harassment was not sex discrimination. To assert a claim of discrimination by reason of sex under s. 6(1) of the *Human Rights Act*, Twaddle J.A. held that three elements must be present: (1) discrimination; (2) because of sex; and (3) in respect of employment. He proceeded to examine each of these elements in turn. With respect to the element of discrimination, Twaddle J.A. held that the intent of the Manitoba legislature was to prohibit differentiation on the basis of categorical grouping. It was not to prevent differentiation between people on the basis of individual characteristics or qualifications. Twaddle J.A. explained his understanding of categorical grouping as (at p. D/3844): "a distinction which results in people being dealt with on account of group characteristics, unrelated to merit, rather than individual ability and qualifications". In his view, harassment could not be seen to constitute differentiation on a categorical basis (at p. D/3845):

Harassment is as different from discrimination as assault is from random selection. The victim of assault may be chosen at random just as the victim of harassment may be chosen because of categorical distinction, but it is nonsense to say that assault is random selection just as it is nonsense to say that harassment is discrimination. The introduction of a sexual element, be it the nature of the conduct or the gender of the victim, does not alter the basic fact that harassment and assault are acts, whilst discrimination and random selection are methods of choice.

The fact that harassment is sexual in form does not determine the reason why the victim was chosen. Only if the woman was chosen on a categorical basis, without regard to individual characteristics, can the harassment be a manifestation of discrimination. [Emphasis added.]

Twaddle J.A. next considered the second element, whether sexual harassment was differentiation based on sex. He began by providing the following definition of the word "sex" in the Manitoba *Human Rights Act* (at p. D/3845):

Gender, as distinct from the physical attraction of the victim or the manner in which the discrimination is carried out, is in my view the meaning to be given to "sex" as it is used in s. 6 of the *Act*. Only in that sense does it constitute a category of persons as distinct from a personal quality.

Twaddle J.A. contrasted this meaning of the word sex with a different definition concerned with physical attractiveness (at pp. D/3845-46):

"Sex" can also refer to that aura which attracts one person to another, particularly a person of one gender to a person of the other. In this meaning the word is frequently used in combination with another word, as in "sex appeal"... The word in this sense, however, is not categorical in that the degree to which a person has it is determinable on a decidedly subjective basis.

Twaddle J.A. concluded that sexual harassment based on the "sex appeal" of the victim could not constitute sex discrimination (at p. D/3846):

Where the conduct of an employer is directed at some but not all persons of one category, it must not be assumed that membership in the category is the reason for the distinction having been made. The distinction may have been based on another factor. Thus in *Bliss v. Attorney-General of Canada* (1978), 92 D.L.R. (3d) 417 it was held that statutory conditions applicable only at pregnant women did not discriminate against them as women

The gender of a woman is unquestionably a factor in most cases of sexual harassment. If she were not a woman, the harassment would not have occurred. That, however, is not decisive. Only a woman can become pregnant, but that does not mean that she becomes pregnant because she is a woman. We are concerned with the effective cause of the harassment, be it a random selection, the conduct, or a particular characteristic of the victim, a wish on the part of the aggressor to discourage women from seeking or continuing in a position of employment or a contempt for women generally. Only in the last two instances is the harassment a manifestation of discrimination.

Twaddle J.A. then turned to the final issue, whether the discrimination occurred in respect of employment. He was of the view that if discriminatory conduct occurred in a way that directly prejudiced the employment opportunity, the conduct would be said to arise in respect of employment. He was also of the view that the Manitoba *Human Rights Act* only prohibited actions perpetrated by or on behalf of an employer. Co-employment of the discriminator and the victim was not, in Twaddle J.A.'s opinion, sufficient unless the discriminatory behaviour was authorized by the employer.

Applying these principles to the case, Twaddle J.A. concluded there had been no violation of s. 6 of the *Human Rights Act*. He dismissed the argument that the sexual harassment that occurred amounted to sex discrimination (at p. D/3847):

This is not a case in which an employer adopted a practice whereby women as a class were treated differently from men. Nor is it a case in which a rule of general application adversely affected the complainants because they were women. For the harassment to amount to discrimination, it must

have occurred by reason of the categorical selection of the complainants because they were women.

Although not conclusive, the sex of the victims and the sexual nature of the harassment is some evidence of the basis of their selection. There is, on the other hand, no evidence that women as a class were not welcome as employees or were subject to adverse treatment. On the contrary, the evidence discloses that at the restaurant in question women were the only employees other than the cook and the corporate officer. Another female employee testified that the cook touched her a lot by putting his arm around her or touching her neck, but she interpreted that as him being friendly... This evidence suggests that the complainants were chosen for the harassment because of characteristics peculiar to them rather than because of their sex. That is not discrimination no matter how objectionable the conduct. [Emphasis added.]

Twaddle J.A. also dismissed the argument that the discrimination, if any, occurred in respect of employment. In his view, there was not a sufficient connection between the employer and the allegedly discriminatory conduct (at p. D/3847):

Finally, because of the personal nature of the conduct and the fact that the employer could not gain by it, even in the achievement of a discriminatory goal, I do not consider that the victims were affected directly in respect of their employment. The board held that the employer condoned the cook's conduct. That is not, in my view, enough. Adoption of his conduct by the employer, not forgiveness, would be required at the very least to bring the cook's conduct within the meaning of the words "on behalf of the employer".

Twaddle J.A. also concluded that the Manitoba *Human Rights Act* did not impose upon employers the duty to provide a workplace free from sexual harassment.

IV

Issues

In this Court the appellants raise four grounds of appeal. The first and central ground of appeal is that the Manitoba Court of Appeal erred in holding that sexual harassment of the type to which the appellants were subjected was not discrimination on the basis of sex. Second, the appellants challenge the appellate court's holding that the employer could not be held liable for the sexual harassment perpetrated by Grammas. The liability of an employer for harassment of this nature is no longer in issue following the decision of this Court in *Robichaud v. Canada (Treasury Board)*, *supra*. Third, the appellants allege that the Court of Appeal erred in confirming the decision of Monnin J. to reduce the damages awarded by the adjudicator. Finally, the appellants submit that the Court of Appeal erred by ordering costs against the Human Rights Commission in respect of the hearing before the adjudication board.

The respondent, Platy Enterprises Ltd., did not participate in this appeal either through written submission or oral argument. As I noted earlier, Grammas did not participate in any of the proceedings.

V

Is Sexual Harassment Sex Discrimination?

It would appear that since the decision in 1980 in *Bell v. Ladas*, *supra*, human rights adjudication boards and courts in Canada have been to all intents unanimous in the recognition that certain forms of sexual harassment constitute sex discrimination. In *Bell*, in the course of determining whether sexual harassment was included in the concept of sex discrimination in s. 4 of the Ontario *Human Rights Code*, Adjudicator Shime, in *obiter*, made the following oft-quoted remarks (at p. D/156):

In my view, the purpose of The Code is to establish uniform working conditions for employees and to remove those matters enumerated in Section 4 as relevant considerations in the work place. Consideration of matters such as "race, creed, colour, age, sex, marital status, nationality or place of origin" strikes at what the preamble of The Code refers to [as] "the foundation of freedom, justice and peace", and infringes on the "freedom of equality and dignity in rights" which this province and society revere as commonly held values and have enshrined those in The Code. Thus, The Code prohibits these values from becoming negative factors in the employment relationship.

Subject to the exception provided in Section 4(6), discrimination based on sex is prohibited by The Code. Thus, the paying of a female person less than a male person for the same job is prohibited, or dismissing an employee on the basis of sex is also prohibited. But what about sexual harassment? Clearly a person who is disadvantaged because of her sex, is being discriminated against in her employment when employer conduct denies her financial rewards because of her sex, or exacts some form of sexual compliance to improve or maintain her existing benefits. The evil to be remedied is the utilization of economic power or authority so as to restrict a woman's guaranteed and equal access to the work-place, and all of its benefits, free from extraneous pressures having to do with the mere fact that she is a woman. Where a woman's equal access is denied or when terms or conditions differ when compared to male employees, the woman is being discriminated against.

The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender based activity, such as coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment.... [Emphasis added. Italics in original.]

As Huband J.A. acknowledged, Adjudicator Shime's view that certain forms of sexual harassment fall within the statutory prohibition on sex discrimination has been adopted by human rights adjudication boards and tribunals across the country. For example: *Kotyk v. Canadian Employment and Immigration Commission* (1983), 4 C.H.R.R. D/1416 (Can.); *Phillips v. Hermiz* (1984), 5 C.H.R.R. D/2450 (Sask.); *Doherty v. Lodger's International Ltd.* (1981), 3 C.H.R.R. D/628 (N.B.); *Coutroubis v. Sklavos Printing* (1981), 2 C.H.R.R. D/457 (Ont.); *Hughes v. Dollar Snack Bar* (1981), 3 C.H.R.R. D/1014 (Ont.); *Cox v. Jagbrite Inc.* (1981), 3 C.H.R.R. D/609 (Ont.); *Mitchell v. Traveller Inn (Sudbury) Ltd.* (1981), 2 C.H.R.R. D/590 (Ont.); *Torres v. Royalty Kitchenware Ltd.*, *supra*; *Deisting v. Dollar Pizza (1978) Ltd.* (1982), 3 C.H.R.R. D/898 (Alta.); *Hufnagel v. Osama Enterprises Ltd.*, *supra*; and *McPherson v. Mary's Donuts* (1982), 3 C.H.R.R. D/961 (Ont.)

With the exception of the Manitoba Court of Appeal in the case at bar, all of the courts in Canada which have considered the issue, including two appellate courts, have also found sexual harassment to be a form of sex discrimination: *Johnstone v. Zarankin* (1985), 6 C.H.R.R. D/2651 (B.C.S.C.); *Foisy v. Bell Canada* (1984), 6 C.H.R.R. D/2817 (Que. Sup. Ct.); *Commodore Business Machines Ltd. v. Ontario Minister of Labour* (1984), 6 C.H.R.R. D/2833 (Ont. S.C.); *Re Mehta and MacKinnon* (1985), 19 D.L.R. (4th) 198 (N.S.C.A.); and *Robichaud* (F.C.A.), *supra*.

Since the middle of the 1970's, courts in the United States, including the United States Supreme Court, to which reference will be made later, have also reached the conclusion that forms of sexual harassment constitute sex discrimination.

The Manitoba Court of Appeal departed radically from this apparently unbroken line of judicial opinion. To determine whether the Manitoba Court of Appeal was correct in rejecting the reasoning in these cases and in holding that sexual harassment of the sort to which the appellants were subjected could not amount to sex discrimination, it is necessary to consider what is meant by the terms "sex discrimination" and "sexual harassment". Both sex discrimination and sexual harassment are broad concepts, encompassing a wide range of behaviour. For the purposes of this appeal I will restrict my discussion of each of these terms to their manifestations in the workplace. In *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114, a case raising a claim of systemic sex discrimination, the Court had occasion to consider the meaning of discrimination in the employment context. The Court adopted at pp. 1138-39 the definition of discrimination found in the Abella Report on equality in employment (Abella, Equality in Employment: Royal Commission Report (1984), at p. 2), which I quote in full below:

Equality in employment means that no one is denied opportunities for reasons that have nothing to do with inherent ability. It means equal access free from arbitrary obstructions. Discrimination means that an arbitrary barrier stands between a person's ability and his or her opportunity to demonstrate it. If the access is genuinely available in a way that permits everyone who so wishes the opportunity to fully develop his or her potential, we have achieved a kind of equality. It is equality defined as equal freedom from discrimination.

Discrimination in this context means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics. What is impeding the full development of the potential is not the individual's capacity but an external barrier that artificially inhibits growth.

It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

In keeping with this general definition of employment discrimination, discrimination on the basis of sex may be defined as practices or attitudes which have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender.

Numerous definitions of sexual harassment have been proposed. Professor Catharine MacKinnon describes sexual harassment, most broadly defined, as "the unwanted imposition of sexual requirements in the context of a relationship of unequal power" (*Sexual Harassment of Working Women: A Case of Sex Discrimination* (1979), at p. 1). In *Sexual Harassment in the Workplace* (1987), Arjun P. Aggarwal states that sexual harassment (at p. 1) "is any sexually-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity". As Aggarwal states, at p. 1:

Sexual harassment is a complex issue involving men and women, their perceptions and behaviour, and the social norms of the society. Sexual harassment is not confined to any one level, class, or profession. It can happen to executives as well as factory workers. It occurs not only in the workplace and in the classroom, but even in parliamentary chambers and churches. Sexual harassment may be an expression of power or desire or both. Whether it is from supervisors, co-workers, or customers, sexual harassment is an attempt to assert power over another person.

Sexual harassment is any sexually-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity. Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include sexual innuendos, and propositions for dates or sexual favours.

Professors Constance Backhouse and Leah Cohen cite a number of definitions in *The Secret Oppression: Sexual Harassment of Working Women* (1978), including the following description proposed by the Alliance Against Sexual Coercion (at p. 38) "[a]ny sexually oriented practice that endangers a woman's job - that undermines her job performance and threatens her economic livelihood". Backhouse and Cohen list a number of concrete illustrations of harassing behaviour (at p. 38):

Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve verbal innuendo and inappropriate affectionate gestures. It can, however, escalate to extreme behaviour amounting to attempted rape and rape. Physically, the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against, and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favours.

Common to all of these descriptions of sexual harassment is the concept of using a position of power to import sexual requirements into the workplace thereby negatively altering the working conditions of employees who are forced to contend with sexual demands.

Legislative definitions of sexual harassment and guidelines promulgated by various organizations reflect this general view of sexual harassment. In 1980 the American Equal Employment Opportunity Commission produced one of the first set of guidelines dealing with sexual harassment (Equal Employment Opportunity Commission, *Guidelines on Discrimination Because of Sex*, 29 C.F.R. 1604.11(a) (1985)). The Commission took the position that sexual harassment was a violation of Title VII of the *Civil Rights Act of 1964*, the prohibition against sex discrimination:

- (a) harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment, when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

These guidelines have been quoted with approval by courts and human rights tribunals in both the United States and Canada. The *Canada Labour Code*, R.S.C., 1985, c. L-2, as amended by c. 9 (1st Supp.), s. 17, provides the following definition of "sexual harassment":

247.1 ... any conduct, comment, gesture or contact of a sexual nature

(a) that is likely to cause offence or humiliation to any employee; or

(b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

The Manitoba *Human Rights Code*, quoted earlier, which repeals and replaces the Manitoba *Human Rights Act* in force at the time of the initiation of the proceedings in this appeal, also explicitly defines sexual harassment.

The human rights legislation of Ontario and Newfoundland, both of which expressly prohibit sexual

harassment, contain similar definition of "sexual solicitation": Ontario *Human Rights Code*, 1981, S.O. 1981, c. 53, s. 6; The Newfoundland *Human Rights Code*, R.S.N. 1970, c. 262, s. 10.1.

Emerging from these various legislative proscriptions is the notion that sexual harassment may take a variety of forms. Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands. Victims of harassment need not demonstrate that they were not hired, were denied a promotion or were dismissed from their employment as a result of their refusal to participate in sexual activity. This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment, albeit a particularly blatant and ugly one. Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling employees or in which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour.

The Manitoba Court of Appeal judges rejected a series of United States decisions which, over the past decade, considered the question whether sexual harassment of the nature of that found here by Adjudicator Henteleff could constitute sex discrimination within the context of human rights legislation, namely, Title VII of the *Civil Rights Act of 1964*. Title VII states that it is an unlawful employment practice "... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin".

The American courts have tended to divide sexual harassment into two categories: the "*quid pro quo*" variety in which tangible employment related benefits are made contingent upon participation in sexual activity, and conduct which creates a "hostile environment" by requiring employees to endure sexual gestures and posturing in the workplace. Both forms of sexual harassment have been recognized by the American Courts including the United States Supreme Court: *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977); *Bundy v. Jackson*, 641 F.2d 934 (D.C. Cir. 1981); *Henson v. Dundee*, 682 F.2d 897 (11th Cir. 1982); and *Meritor Savings Bank v. Vinson*, 106 S. Ct. 2399 (1986). Canadian human rights tribunals have also tended to rely on the *quid pro quo*/hostile work environment dichotomy. I do not find this categorization particularly helpful. While the distinction may have been important to illustrate forcefully the range of behaviour that constitutes harassment at a time before sexual harassment was widely viewed as actionable, in my view there is no longer any need to characterize harassment as one of these forms. The main point in allegations of sexual harassment is that unwelcome sexual conduct has invaded the workplace, irrespective of whether the consequences of the harassment included a denial of concrete employment rewards for refusing to participate in sexual activity.

I am in accord with the following dictum of the United States Court of Appeals for the Eleventh Circuit in *Henson v. Dundee*, quoted with approval in the *Meritor Savings Bank* case:

Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Ladas*, *supra*, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

Perpetrators of sexual harassment and victims of the conduct may be either male or female. However, in the present sex stratified labour market, those with the power to harass sexually will predominantly be male and those facing the greatest risk of harassment will tend to be female. Professor Hickling documents this situation in an article entitled "Employer's Liability for Sexual Harassment" (1988), 17 *Man. L.J.* 124, at p. 127:

Sexual harassment as a phenomenon of the workplace is not new. Nor is it confined to harassment of women by men, though this is by far the most prevalent and significant context. It may be committed by women against men, by homosexuals against members of the same sex. According to a Canadian survey published in 1983 [Canadian Human Rights Commission, Research and Special Studies Branch, *Unwanted Sexual Attention and Sexual Harassment: Result of a Survey of Canadians* (Ottawa: Minister of Supply and Services Canada (1983))], women reported far more exposure to all forms of unwanted sexual attention than did men. Forty-nine percent of women (as compared to 33% of men) stated that they had experienced at least one form of this kind of harassment. The frequency of sexual harassment directed against women was also significantly higher. In the case of sexual harassment experienced by women, most (93%) of the harassers were men, while men complained of harassment by women (62%) and men (24%). The victims of sexual harassment are not confined to any particular group, identifiable by age, sex, class, educational background, income or occupation, although younger single women (and interestingly, those at the lower end of the economic scale) tend to suffer the most. One characteristic that victims usually share in common is their vulnerability to economic sanctions both real and threatened.

Professor Hickling's exposition suggests that women may be at greater risk of being sexually harassed because they tend to occupy low status jobs in the employment hierarchy. Arjun Aggarwal, in his article quoted earlier, offers an additional explanation for the increased vulnerability of women to sexual harassment. Drawing an analogy to the practice of racial discrimination where racial slurs reinforce perceived racial inequality, Aggarwal argues that sexual harassment is used in a sexist society to (at pp. 5-6) "underscore women's difference from, and by implication, inferiority with respect to the dominant male group" and to "remind women of their inferior ascribed status".

In the context of this understanding of sexual harassment and discrimination on the basis of sex, the reasons of the Court of Appeal of Manitoba may be evaluated. Let me say at the outset that, in my opinion, the Court of Appeal erred to the extent that it relied on legislation enacted by the Parliament of Canada and three of the provinces, defining and prohibiting sexual harassment, for the inference that in the absence of such express legislation a prohibition against sexual discrimination could not embrace sexual harassment. The amendments were no doubt intended to make express and explicit what had previously been implicit. As the appellants point out in their factum:

It is worth noting, however, that in those jurisdictions [Ontario, Quebec, Newfoundland, Canada] the decisions given prior to those amendments unanimously came to the conclusion that sexual harassment of the type we are dealing with here constituted sex discrimination. Moreover, most jurisdictions (eg. B.C., Alberta, Saskatchewan, Nova Scotia, etc.) have continued to rely on the prohibition against "sex discrimination" in employment, as a sufficient vehicle to cope with sexual harassment.

The amendments were meant to clarify and educate, not to alter the interpretation of the legislation. As one Ontario Adjudicator, Prof. Peter Cummings, has noted in a subsequent analysis of the Court of Appeal for Manitoba's reasoning:

The question before the Court of appeal in Janzen, however, was not, of course, whether a prohibition against sexual harassment should be a part of Manitoba's human rights legislation but rather whether such a prohibition is in fact implicit in the existing general anti-discrimination provisions of the Act. This must be the question in every jurisdiction examining the place of harassing behaviour under a general anti-discriminatory provision. In some provinces (Quebec, Newfoundland and Ontario) and in the federal sphere the legislatures have decided to use express language where before an implicit prohibition had been sufficient. Given this obvious advantage of clarity and certainty which an express prohibition allows, these new provisions are to be applauded. It seems ironic, however, at the least, that in making its own progressive policies explicit a legislature may endanger equally progressive implicit assumptions about general legislation in another province.

The legislative history of the Ontario provision suggests that the government of the day viewed the explicit inclusions of harassment as a measure to clarify existing rights rather than to create new ones.

In my view the more general language found in legislation without explicit provisions also prohibits sexual harassment in employment.

See *Boehm v. National System of Banking Ltd.*, (1987), 8 C.H.R.R. D/4110 at D/419-20; and also *Zarankin*, supra, at D/2276-77.

There appear to be two principal reasons, closely related, for the decision of the Court of Appeal of Manitoba that the sexual harassment to which the appellants were subjected was not sex discrimination. First, the Court of Appeal drew a link between sexual harassment and sexual attraction. Sexual harassment, in the view of the Court, stemmed from personal characteristics of the victim, rather than from the victim's gender. Second, the appellate court was of the view that the prohibition of sex discrimination in s. 6(1) of the *Human Rights Act* was designed to eradicate only generic or categorical discrimination. On this reasoning, a claim of sex discrimination could not be made out unless all women were subjected to a form of treatment to which all men were not. If only some female employees were sexually harassed in the workplace, the harasser could not be said to be discriminating on the basis of sex. At most the harasser could only be said to be distinguishing on the basis of some other characteristic.

The two arguments raised by the Manitoba Court of Appeal may in fact be seen as alternate formulations of the following argument. Discrimination implies treating one group differently from other groups, thus all members of the affected group must be subjected to the discriminatory treatment. Sexual harassment, however, involves treating some persons differently from others, usually on the basis of the sexual attractiveness of the victim. The harasser will typically choose one, or several, persons to harass but will not harass all members of one gender. As harassers select their targets on the basis of a personal characteristic, physical attractiveness, rather than on the basis of a group characteristic, gender, sexual harassment does not constitute discrimination on the basis of sex.

This line of reasoning has been considered in both Canada and the United States, and in my view, quite properly rejected. The reasons for the rejection were cogently expressed by Adjudicator Lynn Smith in

Zarankin v. Johnstone (1984), 5 C.H.R.R. D/2274 (B.C. Bd.), at p. 2276 (appeal to Supreme Court of British Columbia dismissed (1985), 6 C.H.R.R. D/2651):

Although it might be thought that sexual harassment would not amount to sex discrimination unless all employees of the same gender were equally recipients of it, that is fallacious. So long as gender provides a basis for differentiation, it matters not that further differentiation on another basis is made. An analogy would be a complaint of sex discrimination against an employer who decided to dismiss all of his married female employees but none of his male employees and none of his unmarried female employees. The decision would affect one group adversely -- female employees -- even though it would not affect every member of that group. Similarly, an employer who selects only some of his female employees for sexual harassment and leaves other female employees alone is discriminatory by reason of sex because the harassment affects only one group adversely.

The fallacy in the position advanced by the Court of Appeal is the belief that sex discrimination only exists where gender is the sole ingredient in the discriminatory action and where, therefore, all members of the affected gender are mistreated identically. While the concept of discrimination is rooted in the notion of treating an individual as part of a group rather than on the basis of the individual's personal characteristics, discrimination does not require uniform treatment of all members of a particular group. It is sufficient that ascribing to an individual a group characteristic is one factor in the treatment of that individual. If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value. It is rare that a discriminatory action is so bluntly expressed as to treat all members of the relevant group identically. In nearly every instance of discrimination the discriminatory action is composed of various ingredients with the result that some members of the pertinent group are not adversely affected, at least in a direct sense, by the discriminatory action. To deny a finding of discrimination in the circumstances of this appeal is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive. It is to argue, for example, that an employer who will only hire a woman if she has twice the qualifications required of a man is not guilty of sex discrimination if, despite this policy, the employer nevertheless manages to hire some women.

The argument that discrimination requires identical treatment of all members of the affected group is firmly dismissed by this Court in *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 000 (judgment being delivered concurrently herewith). In *Brooks* I stated that pregnancy related discrimination is sex discrimination. The argument that pregnancy related discrimination could not be sex discrimination because not all women become pregnant was dismissed for the reason that pregnancy cannot be separated from gender. All pregnant persons are women. Although, in *Brooks*, the impugned benefits plan of the employer, Safeway, did not mention women, it was held to discriminate on the basis of sex because the plan's discriminatory effects fell entirely upon women.

The reasoning in *Brooks* is applicable to the present appeal. Only a woman can become pregnant; only a woman could be subject to sexual harassment by a heterosexual male, such as the respondent Grammas. That some women do not become pregnant was no defence in *Brooks*, just as it is no defence in this appeal that not all female employees at the restaurant were subject to sexual harassment. The crucial fact is that it was only female employees who ran the risk of sexual harassment. No man would have been subjected to this treatment. The sexual harassment the appellants suffered fits the definition of sex discrimination offered

earlier: "practices or attitudes which have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender".

To argue that the sole factor underlying the discriminatory action was the sexual attractiveness of the appellants and to say that their gender was irrelevant strains credulity. Sexual attractiveness cannot be separated from gender. The similar gender of both appellants is not a mere coincidence, it is fundamental to understanding what they experienced. All female employees were potentially subject to sexual harassment by the respondent Grammas. That his discriminatory behaviour was pinpointed against two of the female employees would have been small comfort to other women contemplating entering such a workplace. Any female considering employment at the Pharos restaurant was a potential victim of Grammas and as such was disadvantaged because of her sex. A potential female employee would recognize that if she were a male employee she would not have to run the same risks of sexual harassment. In *Brooks*, in reference to a health benefits plan which imposed the costs of pregnancy upon women, I stated that "[R]emoval of such unfair impositions upon women and other groups in society is a key purpose of anti-discrimination legislation" (p. 000). That statement is equally applicable to the sexual harassment that was suffered by the appellants in this appeal. Because they were women, the appellants were subject to a disadvantage to which no man at the restaurant would have been subject. As the LEAF factum puts it, "... sexual harassment is a form of sex discrimination because it denies women equality of opportunity in employment because of their sex." It is one of the purposes of anti-discrimination legislation to remove such denials of equality of opportunity.

As noted earlier, the argument that sexual harassment is sex discrimination has been recognized by a long line of Canadian, American and English (see *Porcelli v. Strathclyde Regional Council*, [1985] I.C.R. 177 (E.A.T.-Scot.), aff'd [1986] I.C.R. 564 (Ct. of Session)) cases which have found sexual harassment to be sex discrimination.

In conclusion on this point, I offer a quotation from a leading American decision, *Bundy v. Jackson*, *supra*, at p. 942, which is equally applicable to the legislation at issue in this appeal:

... our task of statutory construction in *Barnes* was to determine whether the disparate treatment Barnes suffered was "based on . . . sex." We heard arguments there that whatever harm Barnes suffered was not sex discrimination, since Barnes' supervisor terminated her job because she had refused sexual advances, not because she was a woman. We rejected those arguments as disingenuous in the extreme. The supervisor in that case made demands of Barnes that he would not have made of male employees. "But for her womanhood ... [Barnes'] participation in sexual activity would never have been solicited. To say, then, that she was victimized in her employment simply because she declined the invitation is to ignore the asserted fact that she was invited only because she was a woman subordinate to the inviter in the hierarchy of agency personnel.

We thus made it clear in *Barnes* that sex discrimination within the meaning of Title VII is not limited to disparate treatment founded solely or categorically on gender. Rather, discrimination is sex discrimination whenever sex is for no legitimate reason a substantial factor in the discrimination.

VI

Is the Respondent Liable?

The liability of employers for the acts of their employees in situations such as in the present appeal has been settled by the recent decision of this Court in *Robichaud v. Canada (Treasury Board)*, *supra*. This decision, which reversed the judgment of the Federal Court of Appeal, was delivered subsequent to the decision of the Manitoba Court of Appeal in the present case. In *Robichaud*, La Forest J., writing for the Court, considered the liability of an employer for sexual harassment under the *Canadian Human Rights Act*, where the harassment was committed by an employee. His words are equally applicable to the Manitoba legislation; each Act has a similar purpose and structure.

La Forest J. began by stating that human rights legislation (at p. 92):

... is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected.

He continued two pages later:

Indeed, if the Act is concerned with the effects of discrimination rather than its causes (or motivations), it must be admitted that only an employer can remedy undesirable effects; only an employer can provide the most important remedy -- a healthy work environment.

La Forest J. then concluded that the statute requires that employers be held liable for the discriminatory acts of their employees where those actions are work-related. He did not try to apply principles of vicarious liability, saying that this was unhelpful and, in any event, unnecessary since the employer's liability could be found within the statute (at p. 95):

Hence, I would conclude that the statute contemplates the imposition of liability on employers for all acts of their employees "in the course of employment", interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability; it is purely statutory.

Although the employer in the *Robichaud* case was the Crown, it is clear that La Forest J.'s words are meant to apply to all employment relationships. At no point in his judgment is any significance attached to the Crown status of the employer.

On the basis of La Forest J.'s decision, the respondent Platy Enterprises Ltd. must be held liable for the actions of the cook Grammas. Grammas' actions fall within the "course of his employment" as defined by La Forest J.'s purposive interpretation. On page 92, La Forest J. expanded on the meaning to be given to "course of employment", arguing that the term should not be interpreted as only referring to activities which fall narrowly within the employee's job description. To employ such a narrow definition, he said, would be wrongly to import tortious notions of vicarious liability into the field of discrimination law. He concluded that employers are liable for any action of their employees which is "work-related" (at p. 92):

It would appear more sensible and more consonant with the purpose of the Act to interpret the phrase "in the course of employment" as meaning work- or job-related ...

The difference between the words of the Manitoba Act, "in respect of employment", and those of the Canadian Act, "course of employment", is not significant. La Forest J.'s words apply equally to both Acts.

In light of this interpretation it cannot be argued that Grammas was not acting in respect of his employment when he sexually harassed the appellants. His actions were clearly work related. Grammas' opportunity to harass the appellants sexually was directly related to his employment position as the next in line in authority to the employer. Grammas used his position of authority, a position accorded him by the respondent, to take advantage of the appellants. The authority granted to Grammas, both through his control in running the restaurant, including his control over food orders and work hours, and through his purported ability to fire waitresses, gave him power over the waitresses. It was the respondent's responsibility to ensure that this power was not abused. This it clearly did not do, even after the appellants made specific complaints about the harassment. So it is liable for the actions of Grammas.

VII

The Damages Award

I quoted earlier the remarks of Monnin J. in reducing the award of damages to Janzen and Govereau. With great respect, no persuasive arguments were presented by Monnin J. as to why Adjudicator Henteleff erred in his award. The amounts are not inordinate in light of the seriousness of the complaints.

VIII

Costs Before the Board of Adjudication

The Court of Appeal awarded costs to the respondents and against the Commission not only before the Court of Queen's Bench and the Court of Appeal, but also before the Board of Adjudication itself. The order with respect to costs will be set aside because of this Court's decision on the respondent's liability. I wish however to comment briefly on the Court of Appeal's decision to award costs against the Commission in respect of the hearing before the Board of Adjudication. Even if the Court of Appeal's decision on liability had been upheld in this Court, I would see no justification for this award of costs against the Commission. Under the Act, the Board of Adjudication itself is given no authority to award costs. One reason for this is that the Commission has a duty under s. 20 of the Act to bring complaints before the Board, unless those complaints are, *per s. 19(4)*, "without merit". Therefore, while appreciating that courts do have a discretion with respect to costs, I believe costs should only be ordered against the Manitoba Human Rights Commission in exceptional circumstances. There was no reason to exercise that discretion on the facts of this case, even as these facts were interpreted by the Court of Appeal. The complaint brought forth by the Commission was clearly with merit. It succeeded before the Board and the Court of Queen's Bench. For the Commission to have refused to have brought forth the complaint would have been a neglect of its statutory duty.

IX

Disposition

For the aforementioned reasons I would allow the appeal, set aside the judgment of the Court of Appeal of Manitoba and restore the judgment of Monnin J. of the Court of Queen's Bench, except as to the award of damages which should be as stated by Adjudicator Henteleff. The appellants are entitled to costs at all levels, except before the Board of Adjudication.

Appeal allowed with costs.

Solicitor for the appellants: Tanner Elton, Winnipeg.

Solicitors for the intervener: Fillmore & Riley, Winnipeg.

* Le Dain J. took no part in the judgment.

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Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process

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Preamble

The information contained in this Guide is grouped into two sections. The first section presents an overview of the investigation process for the *Policy on Harassment Prevention and Resolution* ([/pol/doc-eng.aspx?id=26041§ion=text](#)) and the *Directive on the Harassment Complaint Process* ([/pol/doc-eng.aspx?id=26040§ion=text](#)). The second section provides more details for each stage of the process; and finally the annexes contain additional information, tools, templates and tips to conduct a high quality and professional investigation. The Guide can therefore be used according to the experience and knowledge of the user.

Section I

1.1 Purpose

Harassment investigations require that investigators not only have the knowledge and the research, planning, interviewing and analytical skills, they must also be sensitive to the emotional issues and the impact that an alleged harassment situation has on individuals and on the workplace as a whole. This guide has been designed to ensure that the investigator will be able to undertake thorough and impartial investigations into harassment allegations. It is also intended to provide a reference document that will assist the person responsible for managing the harassment complaint process to ensure the highest degree of quality.

The guide will also assist the parties in understanding the investigative process by:

1. Clarifying the role and responsibilities of investigators in conducting a thorough, timely, sensitive, and discreet investigation which includes:
 - Preparing an effective plan for identifying and collecting information;
 - Analyzing and summarizing the information and evidence obtained from interviews and pertinent documentation; and
 - Preparing a clear and concise preliminary summary of facts and an investigation report.

2. Providing suggestions and standards of practice for each step in the investigative process; and
3. Providing investigative and reporting tools.

The Policy on Harassment Prevention and Resolution

The Treasury Board *Policy on Harassment Prevention and Resolution* ([/pol/doc-eng.aspx?id=26041§ion=text](http://pol/doc-eng.aspx?id=26041§ion=text)) defines harassment as follows:

Improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Criteria to be met to establish whether there was a breach of the Policy:

To substantiate the allegations, the investigation must demonstrate that, according to the balance of probability:

- a. The respondent displayed an **improper and offensive conduct** including objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the Canadian Human Rights Act (<http://laws.justice.gc.ca/en/h-6/>);
- b. The behaviour was **directed at** the complainant;
- c. The complainant was **offended or harmed**, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;
- d. The respondent **knew or reasonably ought to have known** that such behaviour would cause offence or harm; and
- e. The behaviour occurred in the **workplace** or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

1.2 Responsibility and Authority

The Policy provides that the ultimate responsibility and authority for preventing and addressing harassment in the workplace rest with the Deputy Head and that person's designated official(s).

Harassment investigators are expected to meet the *Competencies Profile for Harassment Investigators* (/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp) which can be obtained from the Treasury Board Secretariat (TBS) website.

Application

The *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041§ion=text>) applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/f-11/>) unless excluded by specific acts, regulations or Orders in Council.

It covers employee behaviours in the workplace or at any location or any event related to work, including while on travel status, at a conference where the attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

The *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>) flows from the TB *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041§ion=text>) and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of the Directive.

Though other persons who work for the core public administration such as contractors, volunteers, temporary workers hired through agencies and Governor in Council appointees are excluded from the complaint process, managers should address any alleged harassment involving these individuals in accordance with the spirit of the Policy and the Directive. Members of the public cannot file a complaint under the Policy; however management should ensure the alleged harassment concerns are addressed.

In addition the *Guide on Applying the Harassment Resolution Process* (</gui/gahrp-gaprh-eng.asp>) should be read in conjunction with the Directive as it is fundamental in interpreting and applying efficiently the harassment complaint process.

Time Limit

The written complaint of harassment should be submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances) as prescribed by the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>). Allegations concerning events which occurred outside of this time limit can be included if the complainant can demonstrate that the incidents are directly related to the allegations that fall within the prescribed time limits. This is especially important in cases where the complainant intends to demonstrate a pattern of events.

Privacy and Disclosure of Information

The *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) requires that Federal Government institutions that collect personal information from individuals for an administrative purpose inform them of the purpose for which it is being collected. The information provided in the course of an investigation is collected under the authority of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/f-11/>) and is considered to be required for the purpose of dealing with harassment allegations, to make decisions as to whether or not harassment has occurred, and in such cases to determine appropriate action, including disciplinary and/or corrective measures.

Furthermore, the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) prohibits a Federal Government institution from using or disclosing personal information for any other purpose than that for which it was collected unless in accordance with specific exceptions cited at section 8 of that Act (example: for complying with a subpoena, for archival purposes or for research or statistical purposes).

The *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) establishes the rights of individuals to:

- Examine or obtain copies of the personal information kept about them by federal government agencies (subject to specific exceptions such as where the release of information might be injurious to national security or to the conduct of a criminal investigation);
- Ask to correct any errors or, if this request is refused, to note on the record itself that the accuracy of a record is contested; and
- Know why the information is being collected.

The *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) also governs the collection, use, disclosure, retention and disposal of personal information in regard to harassment complaints and the resolution thereof. This type of personal information is protected under the Act and will be stored in a personal information bank designated by the organization.

The *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) gives Canadian citizens the right to have access to information in federal government records. However, this is subject to exemptions, where the disclosure of the information could be injurious to certain interests (example: the safety of individuals or the defence of Canada) or where the information falls within a specific class such as, personal information or information which is subject to solicitor-client privilege.

The individuals referred to in a harassment investigation report have the right to know, both under the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) and in accordance with the principles of natural justice, what has been said about them and by whom (although at times exceptions may apply). They have the right to request both their own personal information and any other information that is relevant to the harassment allegation and investigation thereof.

To obtain further information about *Access to Information and Privacy*, please consult *Annex 11* ([hig04-eng.asp#an11](http://www.hig04-eng.asp#an11)) of the Guide, *Content and Disclosure of Harassment Investigation Reports*.

1.3 The Investigation Process

Every effort should be made to resolve workplace issues through an informal resolution process. Informal resolution processes are also commonly called interest based conflict resolution, *Informal Conflict Management System* ([/gui/conflgui-eng.asp](http://www.higpr-eng.asp)) and alternative conflict resolution. However, when this process has been unsuccessful, declined by the parties or if it is deemed inappropriate, the person responsible for managing the harassment complaint process may initiate an administrative investigation to determine whether the allegations are founded or not. An effective investigation of harassment allegations is fundamental to the successful resolution of workplace harassment.

There can be several participants in the investigation process. This includes complainants, respondents and witnesses. During the investigation all parties are expected to co-operate in the complaint process if and when called upon to do so.

Discussion of all aspects pertaining to the complaint should be limited to those who need to know in order to minimize damage to the work environment.

An overview of the administrative investigation process is provided below. Each element of the process is described in greater detail throughout this Guide.

Stage One: Selecting and Mandating the Investigator



Stage Two: Planning the Investigation - Preparing the file



Stage Three: Conducting the Investigation – Establishing the facts



Stage Four: Validating the facts - Preliminary Summary of Facts



Stage Five: Analysis and Conclusion



Stage Six: Report



Stage Seven: Administrative Closure

Stages of the Administrative Investigation

Stage One - Selecting and Mandating the Investigator

The key to conducting an investigation that is fair, prompt, and impartial starts with the selection of an investigator who can create an environment of trust and confidence throughout the investigation. Equally important is the establishment of a proper investigation mandate for the investigator. A sample investigation mandate can be found at [Annex 1 \(hig03-eng.asp#an1\)](#).

In selecting and mandating the investigator, it is important to remember that:

- The investigator appointed must be capable of conducting an independent investigation in a thorough, timely, impartial, unbiased, discreet, and sensitive manner.
- The investigator must meet the [Competencies Profile for Harassment Investigators \(/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp\)](#).
- Once appointed, the investigator will be provided with a written mandate that will authorize, govern and focus the activities associated with the investigation.

Stage Two – Planning the Investigation – Preparing the File

In order to plan the investigation and prepare the file, the following steps should be followed by the investigator:

1. Obtain, review, clarify and negotiate and sign the mandate assigned by the person responsible for managing the harassment complaint process;
2. Review the allegations and ensure that the specific allegations are clear and have been provided in writing to the respondent and that he or she has been given an opportunity to respond to them. If the allegations have not been provided to the

respondent, the investigator should contact the person responsible for managing the harassment complaint process and ask him/her to do so.

3. Review applicable legislation, policies and related jurisprudence, as well as the criteria to be met under the Policy and Directive;
4. Prior to the commencement of the investigation, confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process;
5. Prepare an investigation plan ([Annex 3 \(hig03-eng.asp#an3\)](#) of this Guide provides further details on preparing an investigation plan); and
6. Obtain and review all supporting documents relevant to the matters under investigation.

Stage Three – Conducting the Investigation – Establishing the Facts

Applying the principles of procedural fairness (see [Section II \(hig02-eng.asp#sec2\)](#)), the investigator should interview the parties as well as any pertinent witnesses with respect to each allegation to ascertain all relevant facts relating to the complaint. In particular, the investigator should consider the following questions:

- Is there information to support or refute the allegations? If yes, what is it?
- What was the period of time over which the conduct took place?
- Is there information available to suggest that the conduct was intentional?
- Does it appear that the conduct was persistent, pervasive?
- What have the repercussions and impact of the situation been for the parties?

Should additional allegations be made during the course of the investigation, such allegations are to be brought to the attention of the person responsible for managing the harassment complaint process to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation, they are to be presented in writing to the respondent.

Should opportunities for the use of an informal resolution processes arise, at the suggestion of either party, during the investigation process, this should be discussed with the person responsible for managing the harassment complaint process who will suspend the investigation pending the outcome of the informal process.

Stage Four – Validating the Facts – Preliminary Summary of Facts

Once the investigator has gathered the relevant facts he or she must validate this information with the parties. In order to do so, the investigator will:

1. Prepare a preliminary summary of facts containing the following elements:

- A description of the allegations; and
 - A description of the background and evidence that has been collected in relation to each allegation.
2. Submit the preliminary summary of facts to the person responsible for managing the harassment complaint process, ensuring respect of the requirements of the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) and *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>).
 3. Ensure the parties have the opportunity to provide written comments.
 4. Consider any additional information provided by the parties and incorporate it into the report if it is deemed appropriate to do so.

To obtain a sample preliminary summary of facts, please consult Annex 8 (hig04-eng.asp#an8) of this Guide.

Stage Five - Analysis and Conclusion

After final disclosure of the facts to the parties, the investigator will:

- Determine and identify the substance of each allegation;
- Determine whether or not, according to the balance of probability, the behaviour occurred and if so, whether the behaviour meets the definition of harassment set out in the Policy; and
- If the allegations are not founded, determine whether the allegations were made vexatiously or in bad faith, if asked to do so by the person responsible for managing the harassment complaint process; and
- Comment on any underlying factor(s) encountered during the course of the investigation that may have contributed to the situation or may have had a negative effect on the work environment, if asked to do so by the person responsible for managing the harassment complaint process.

For further information about analysing the facts, refer to Annex 7 (hig04-eng.asp#an7) of this Guide.

Stage Six - Report

The investigator will then prepare the final report relying on the information from the preliminary summary of facts. The final report should contain the following elements:

- A description of the allegations;
- A description of the investigation process followed;
- A description of the background information and evidence that supports or refutes each allegation;
- An analysis of the evidence in respect to each allegation; and

- A statement as to whether or not the behaviour described in each allegation constitutes a breach of the Policy.

The final report must also be written in accordance with the requirements of the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) and *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>). It is then submitted to the person responsible for managing the harassment complaint process with all related supporting documents and statements from the parties and the witnesses with the complete investigation file.

Annex 9 (hig04-eng.asp#an9) of this Guide may be helpful in drafting the investigation report.

Stage Seven - Administrative Closure

In order to achieve administrative closure, the person responsible for managing the harassment complaint process:

- Informs the parties of his/her decision with respect to the allegations;
- Provides the parties with a copy of the final report; and
- Informs the parties' managers and provides them with a copy of the final report where a decision on disciplinary measures has to be made by the manager or when deemed appropriate. Disciplinary decisions will be made by the manager in consultation with the Labour Relations Officer.

The final report accompanied by the decision letter is sent to the parties and constitutes administrative closure for the purpose of the harassment resolution process.

Section II

Stage One: Selecting and Mandating the Investigator

Selecting an Investigator

The investigator appointed by the person responsible for managing the harassment complaint process must be capable of conducting an independent investigation in a thorough, timely, discreet, and sensitive manner in the language of the parties' and witnesses' choice and should be trained in harassment investigation techniques. The investigator must be impartial and unbiased.

At times, it may be necessary to obtain an investigator from outside the Federal Public Service. In determining whether it would be appropriate to use the services of an external investigator, the person responsible for managing the harassment complaint process should consider the following factors:

- Cost;
- Timeliness, degree of urgency;
- Real or perceived objectivity;
- Availability of internal investigators;
- The predicted length and complexity of the investigation and the organization's ability to use an internal resource for a lengthy period of time; and
- Level of security required.

The investigator must have a security clearance appropriate for the case being investigated and must meet the *Competencies Profile for Harassment Investigators* (/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp). Public Works and Government Services Canada provides a list of external investigators approved to investigate harassment complaints in the Public Service. In certain cases, there may be occasions where an investigation team of two or more investigators is warranted. In determining whether this approach is warranted, the person responsible for managing the harassment complaint process should consider the impact of gender, race, organizational culture, and language, among other things, on the investigation as well as its scope and complexity.

Roles and Responsibilities of the Investigator

The investigator is responsible for managing the harassment investigation. Essentially, the investigator is accountable for:

- Researching and planning the investigation including gathering, examining and recording all relevant evidence from available documentation;
- Presenting an investigation plan to the person responsible for managing the harassment complaint process;
- Identifying gaps in information, potential sources of additional information and persons who may be able to supplement or corroborate information;
- Planning and preparing investigative and interviewing questions to assist in obtaining the necessary evidence about the alleged incidents;
- Conducting interviews with the parties and relevant witnesses;
- Analyzing the evidence and circumstances and determining the substance of each allegation;
- Preparing the preliminary summary of facts and the investigation report; and

- Ensuring that the parties are aware of their rights and responsibilities, including the right to be accompanied and assisted by a person of their choice.

The Investigator's Mandate

Once appointed, the investigator will be provided with a written mandate by the person responsible for managing the harassment complaint process that will authorize, govern, and focus the activities associated with the investigation. The accountabilities listed above should be clearly spelled out in the mandate.

In order to assist the investigator in understanding the requirements of the investigation, the mandate should contain:

- A clear and detailed statement of the allegations to be investigated, together with a description of the purpose and scope of the investigation to be undertaken;
- A clear delineation of roles and responsibilities vis-à-vis the departmental representative(s) including the person responsible for managing the harassment complaint process;
- Specific instructions regarding issues such as security designation, Access to Information and Privacy, the handling of new allegations, requirements for handling information related to possible criminal activity or other information of wrongdoing under the *Public Service Disclosure Protection Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-31.9/>), or action to be taken if the possibility of using informal resolution processes becomes evident during the investigation;
- The requirement that the complete investigation file, including all notes and documents collected or created by the investigator in relation to the investigation, are the property of the employer and must be relinquished to the person responsible for managing the harassment complaint process, at his or her request;
- Expected timeframes within which the investigation is to be completed and the date by which the final report is required; and
- A description of the type of resources available to the investigator (e.g. clerical support, meeting space, etc.), if applicable.

An example of a mandate is provided in [Annex 1 \(hig03-eng.asp#an1\)](#) of this Guide for further clarification. Matters such as the availability of departmental resources, travel costs, contract costs, method of payment, or any other financial matter should be included separately as part of the contract for services.

Other Important Considerations

Investigators must strictly adhere to the investigation mandate. Any issues that arise in the course of the investigation that fall outside of the investigator's mandate should be brought to the attention of the person responsible for managing the harassment complaint process and the mandate should be amended accordingly. The mandate should be limited to investigating allegations of harassment and the investigator should not be mandated nor should he or she undertake informal resolution processes such as mediation or conduct a workplace assessment in conjunction with an investigation since this could lead to a conflict in role and responsibilities.

If the investigator discovers the possibility of a criminal offence having been committed, fraud or wrongdoing under the *Public Service Disclosure Protection Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-31.9/>) during the investigation, the investigator must inform the person alleging such behaviour that this falls outside his or her mandate and that the person who mandated the investigator will be notified accordingly.

The investigator should be sensitive to the possibility of using informal resolution processes as a means of resolving the dispute since this could be beneficial and desirable for the parties. At any time in the process, if the parties are interested in resolving the dispute informally, the person responsible for managing the harassment complaint process should be informed without delay. The use of ICMS processes could lead to resolution of the dispute, or partial resolution of the dispute. In cases where some of the issues are resolved informally, the person responsible for managing the harassment complaint process may ask the investigator to investigate any outstanding issues that were not resolved in this fashion.

Information exchanged in the course of informal resolution processes is confidential and cannot be accessed by the investigator and should not be used or disclosed by the parties in the course of the investigation.

Stage Two: Planning the Investigation

The approach presented in the following section is intended to help ensure the application of the principles of procedural fairness for the parties involved in the investigation. It includes criteria and guidance to help the investigator and the person responsible for managing the harassment complaint process.

Prior to the commencement of the investigation, the investigator should confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process.

Policies and Legislation

It is essential to have a solid understanding of the Policy, Directive and any related departmental policies, the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) and *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>), as well as any pertinent case law on the issues in dispute.

The Allegations

The written allegations should contain a detailed explanation of the alleged incidents, the name of the respondent, the relationship between the parties, a description of the alleged incidents including the date, time and location and the names of witnesses, if applicable.

Witnesses

The written allegations may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the allegations. In addition, the response of the respondent may include the names of witnesses.

If there is any uncertainty about their relevance to the investigation, the investigator should clarify their pertinence with the parties. Witnesses must have some direct correlation to the allegations. To determine the relevance of their testimony, the investigator could ask the parties to describe how a certain witness will contribute to the investigation. The investigator has the discretion to determine which witnesses to interview and may decide not to interview certain individuals if it is unlikely that they will add any value to the investigation. For example, in assessing whether the testimony of a witness is relevant, the investigator may decide that a great number of witnesses is not needed to substantiate the same allegation and that anything that is admitted by both parties will not need to be confirmed by a witness.

Documentation

The preparation phase also involves another step – a review of the exhibits presented by the parties and the written allegations and response to the allegations. A review of the documents will allow the investigator to identify additional witnesses and will assist in understanding the basis for the allegations.

The Investigation File

The investigation process is subject to the provisions of the *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>). Essentially, **this means that witnesses cannot be assured that the exchanges with the investigator will be kept confidential.** Any person questioned in the course of an investigation may have access to the investigation file to obtain information that relates to him or her since this is considered to be their own personal information. This principle applies to interview notes and any other documentation that the investigator uses during the investigation. The investigator should take care to record personal information only when it is relevant and appropriate, and to clearly distinguish between facts and opinions.

To obtain further information about access to information and privacy, the person responsible for managing the harassment complaint process may contact the Access to Information and Privacy Coordinator in their organization. In addition, Annex 11 (hig04-eng.asp#an11) of this Guide provides some tips on access to information and privacy.

The Investigation Plan

The final stage of preparation entails creating the investigation plan. The plan is provided to the person responsible for managing the harassment complaint process prior to the commencement of the investigation to ensure that the investigation complies with the mandate.

The investigation plan can be used as an initial checklist to ensure that all of the critical elements will be covered; it includes:

- The names of the parties and witnesses that will be interviewed;
- Any documentary evidence that will be examined; and
- Timelines.

Depending on the complexity of the investigation, the plan will be either more or less detailed. It should be reviewed throughout the investigation to determine if there is a need to amend it as the investigation unfolds. The person responsible for managing the harassment complaint process should be consulted to ensure that the mandate is being properly respected. Tips on preparing an investigation plan can be found at Annex 3 (hig03-eng.asp#an3).

Stage Three: Conducting the Investigation

The Concept of Procedural Fairness

The duty to act fairly must be distinguished from the traditional principles of natural justice applicable to courts of justice and quasi-judicial tribunals. When a decision that will have serious consequences for those involved is made, there is a duty to provide certain procedural protections throughout the process. The more serious the allegations and potential negative repercussions for the person accused of harassment, the more stringent the aspects of procedural fairness should be. Investigators should always respect procedural fairness, but the extent to which measures are taken to protect these principles will depend on the nature of the allegations and the consequences for the parties; this concept is explained in greater detail in the following paragraphs.

The duty to act fairly in conducting administrative investigations was expressed in a decision of the Supreme Court of Canada (*Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, [1979] 1 S.C.R. 311):

"In my opinion, the appellant should have been told why his services were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. The Board itself, I would think, would wish to be certain that it had not made a mistake in some fact or circumstance which it deemed relevant to its determination. Once it had the appellant's response, it would be for the Board to decide on what action to take (...) Such a course provides fairness to the appellant, and it is fair as well to the Board's right, as a public authority to decide, once it had the appellant's response, whether a person in his position should be allowed to continue in office to the point where his right to procedural protection was enlarged. Status in office deserves this minimal protection, however brief the period for which the office is held."

For more information about procedural fairness, here is an extract from a decision of the Supreme Court of Canada (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817):

"The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness:

- 1. The nature of the decision being made and process followed in making it;*
- 2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;*
- 3. The importance of the decision to the individual or individuals affected;*
- 4. The legitimate expectations of the person challenging the decision;*

5. *The choices of procedure made by the agency itself. This list is not exhaustive.*"

An investigation under the *Policy on Harassment Prevention and Resolution* ([/pol/doc-eng.aspx?id=26041§ion=text](#)) and the *Directive on the Harassment Complaint Process* ([/pol/doc-eng.aspx?id=26040§ion=text](#)) is administrative in nature. It is not a judicial remedy (court or tribunal), nor is it quasi-judicial (example: Adjudication under the *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/>)).

Nevertheless, investigators who are responsible for investigating alleged harassment must adhere to the principles of procedural fairness by behaving fairly and equitably towards all of the parties. The importance of procedural fairness is unquestionable; investigators must follow it strictly and at every step in the proceedings within the following principles:

I. The Right to be Informed of the Allegation(s)

The respondent has the right to know the totality of the allegation(s) made by the other party and must be afforded a reasonable opportunity to respond to them. It is generally the role of the person responsible for managing the harassment complaint process to notify the accused party of the allegations at the outset by providing him or her with a copy of the allegations and an opportunity to respond.

II. Investigator Must be Impartial

The parties have the right to an impartial investigator. Investigators must be neutral third parties with no interest or stake in the case or its outcome. It is imperative that their skills be exercised impartially and independently.

An investigator must refrain from taking part in an investigation should a situation arise where bias or a reasonable apprehension of bias may be perceived by the parties.

A written request by a party that the investigator withdraw from the case because of a real or reasonable apprehension of bias on his part must be presented at the outset of the investigation or as soon as the party has knowledge of circumstances that could justify this apprehension. In other words, the parties may be considered to have agreed to proceed before this investigator by the fact that they have not objected. If a request for the investigator to be removed from the investigation reveals circumstances that could give a reasonable person grounds to believe that the investigator could be seen to have an interest in favouring one party over another or if the investigator demonstrates bias towards one of the parties, the person responsible for managing the harassment complaint process should decide whether it would be appropriate to hire the services of a different investigator to maintain the integrity of the process.

"Justice should not only be done, but should be seen to be done."

III. The Right to be Heard and to Present Evidence

The parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, cassettes, tapes, electronic files, photographs, etc.).

It is then up to the investigator to decide whether the evidence submitted is relevant and admissible. Any evidence that confirms or refutes incidents related to the allegations should be admitted as evidence.

The investigator may disregard evidence that would be inadmissible in law because of:

- Rules relating to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. lawyers, mediators); and
- Laws protecting the confidentiality of medical records or other documents (e.g. psychologists, physicians, psychiatrists, Employee Assistance Program counsellor).

IV. The Right to be Accompanied

The parties may designate someone to accompany them during the investigation. This person may select a union representative, a spouse, a friend, etc. This person does not represent the party, but is there to assist.

V. The Right to Review Statements to Confirm their Accuracy

Every person who testifies in the investigation should have access to the statements to verify their accuracy. To ensure this, the investigator should ask the witness to sign and date their statement, before the preliminary summary of facts is written and disclosed to the parties.

VI. The Right to Access and Rebut the Findings

Under normal circumstances, the facts will be gathered during an onsite investigation; the parties to the dispute and the witnesses will be questioned in-person. To satisfy the principles of procedural fairness, the parties must be afforded an opportunity to review the statements of the other party and witnesses through the preliminary summary of facts. This document is limited to reporting the facts as gathered by the investigator. This summary is disclosed to the parties, who have a reasonable opportunity to rebut, comment on or correct the information relied on by the investigator before completing the analysis and making the findings in the final report.

The Burden and Standard of Proof

In resolving harassment situations through administrative investigations, the parties must be treated with dignity and respect. The allegations are simply that - allegations. Directly or indirectly, the complainant must establish to the investigator that harassment did, according to the balance of probability, take place. Until that happens, it must be assumed that the harassment did not occur. This is called the burden of proof.

When analyzing the facts, the investigator will base his or her conclusions on the balance of probability. This is the civil standard of proof that an incident was more likely to have occurred than not.

Sexual Harassment

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain behaviour. For the same reason, the credibility of witnesses is even more critical in sexual harassment cases than in any other type of harassment. Cases may be determined based on an assessment of the credibility of the parties and witnesses. Credibility implies that witnesses tell the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

Further, in cases of alleged sexual harassment similar fact evidence can be used to demonstrate a pattern of behaviour by the respondent, however this is not usually considered in cases of general harassment. This evidence must be used very cautiously and in unique situations where there is limited evidence; it should be similar in nature to the incidents alleged in order to demonstrate a pattern of behaviour.

Abuse of Authority

Abuse of authority is a form of harassment. It occurs when an individual misuses the power and authority inherent in his or her position to endanger a person's job, undermine the person's performance of that job, threaten the person's economic livelihood, or influence the person's career. It includes intimidation, threats, blackmail or coercion.

Abuse of authority should not be confused with the legitimate exercise of managerial responsibilities, even when it involves actions which may be perceived by the employee as offensive or improper. It is more than just a flawed administrative decision and even mere errors or omissions would not generally meet the threshold of harassment.

Managers have the right to manage the workplace in accordance with governing legislation, collective agreements and policies; this includes imposing corrective and/or disciplinary measures, evaluating and managing performance, managing attendance,

approving training and leave requests, among other things. However, the authority conferred upon those designated to manage the workplace is not limitless and managers must exercise their authority legitimately and in good faith.

In making a finding whether allegations of abuse of authority are founded or not, the investigator should consider whether there is any foundation for the actions, observations or conclusions reached by the manager or whether there is evidence of improper intent on behalf of the accused. In order to make a finding of abuse of authority, the conduct must also meet the definition of harassment.

Prepare an Interview Plan

Based on the results of the previous steps and before conducting interviews, the investigator should be aware of which issues will need to be pursued for questioning.

When preparing for interviews, it is important to remember that the objective is to obtain information from individuals that is pertinent to the allegation(s), and that the burden of proof rests with the complainant. For example, if the complainant cannot provide evidence that supports a particular allegation or if there are no witnesses to support the allegation, then the burden of proof never shifts to the respondent and there is no need to investigate that particular allegation any further.

The interview questions should elicit the information from interviewees that can address key investigative areas of interest.

The investigator should identify all the pertinent issues that need to be addressed in preparing the investigation plan and adjust it as required throughout the course of the investigation. The complainant is normally interviewed first, followed by the respondent since they are most closely related to the allegations and will be in a position to provide the most relevant information. Other witnesses should be interviewed in the order of the expected value of their contribution for addressing key investigative questions.

All the parties involved in an alleged harassment situation should expect a professional, transparent, fair and thorough investigation.

Stage Four: Validating the Facts

Reviewing and Disclosing the Information Gathered

Upon completion of the information collection phase, the investigator should have collected information that will permit the formulation of a summary of facts as they relate to each allegation and any other requirements of the mandate.

Assessing the Completeness of the Information Collected

The following questions are useful in assessing the completeness of the information collected:

- Are all of the key investigative issues which were identified in the planning phase adequately addressed?
- For each allegation, does the file contain each party's version of what happened?
- Have all the relevant witnesses been interviewed and their testimony recorded?
- Have all supporting documents been reviewed?
- Is there enough information to begin an analysis?
- Is there a need to go back and collect or verify additional information?
- Have new important questions emerged?

It is suggested that the investigator sort the data according to its relevance to the allegations, group it according to the allegations, distinguish facts from opinions and verify whether there is sufficient and clear information to be able to make a finding as to whether the allegations are founded or not.

The investigator should now be ready to prepare the preliminary summary of facts.

The Preliminary Summary of Facts

Definition of the Preliminary Summary of Facts

Since the gathering of facts has been done through the investigation, the parties do not have the opportunity to hear the other side (*audi alteram partem*). As discussed earlier, procedural fairness requires that each party have access to the version of facts presented by the other party and have the opportunity to respond to them.

To ensure that the parties have an adequate opportunity to comment on the information that will provide the basis for the analysis and conclusions, the investigator will prepare a preliminary summary of facts, setting out the substance of the relevant issues and related evidence. The summary is restricted to presenting the allegations, issues and facts *only*. Its purpose is to provide an objective and logical description of the relevant information that has been gathered.

The preliminary summary of facts will be presented by the investigator to the person responsible for managing the harassment complaint process who will first identify whether there are any gaps, weaknesses or areas that require further investigation, if required. At this stage, it is also important to ensure that the investigator has fulfilled the terms of his or her mandate. Once the person responsible for managing the harassment complaint process is satisfied with the content of the preliminary summary of facts, he or she will distribute a copy to the parties for their review and comment (once it has been reviewed by

the organization to ensure adherence to the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>).

Stage Five: Analysis and Conclusion

Preparation

After gathering information from the various witnesses, reviewing the files and documents, validating the information gathered through the preliminary summary of facts, and receiving the parties' comments on those facts, the investigator can analyze the information and draw conclusions.

Strong analysis is contingent upon carefully sorting through information which can sometimes be vast and contradictory. How the analysis is carried out is just as important as the information being analyzed. It is vitally important that the investigator weigh all available and pertinent evidence in an unbiased and objective manner.

Extenuating Circumstances and Explanations

To ensure that the investigation is fair and thorough, the investigator should weigh the parties' explanations for each allegation which include aggravating and mitigating circumstances. Without excusing the behaviour, the circumstances may help to explain it and this analysis has an impact on the lens through which the situation is viewed.

Reaching a Conclusion

At this stage of the investigation, the investigator should be in possession of:

- The facts;
- The policies or regulations relevant to the allegations;
- Jurisprudence, if applicable;
- Explanations or extenuating circumstances; and
- Any other relevant information.

The investigator must decide whether the behaviour amounts to harassment. Once the investigator has determined the facts based on the balance of probability, he or she must decide whether there was a breach of the Policy on Harassment Prevention and Resolution (</pol/doc-eng.aspx?id=26041§ion=text>) in that:

1. The person accused of harassment exhibited **improper and offensive** conduct, including objectionable act(s), comment(s) or display(s) that demean, belittle, or

cause personal humiliation or embarrassment, and any act of intimidation or threat; and also including harassment within the meaning of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

2. The behaviour was **directed** at the complainant;
3. The complainant was **offended or harmed**;
4. The person accused of harassment **knew or reasonably ought to have known** that this behaviour would cause offence or harm; and
5. The behaviour occurred in the workplace or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and
6. There was a **series of incidents or one severe incident** which had a lasting impact on the individual.

In order to make a finding of harassment, **each** of these elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Depending on the investigator's mandate, once the investigation confirms each of the above-listed elements, the investigator may also determine:

- The exact nature of the behaviour;
- Whether the complainant communicated to the other party his or her discomfort or disagreement with the behaviour;
- Whether the evidence suggests any intent on the part of the respondent to cause offence or harm to the complainant;
- The impact or consequences of the behaviour on the parties;
- In the case of an isolated incident, whether it could be interpreted, in the circumstances, as so serious and with such an impact on the complainant that it meets the definition of harassment set out in the policy.

Determining Whether the Allegation is Vexatious or Made in Bad Faith:

If there is evidence to demonstrate that the allegations are vexatious or made in bad faith, the investigator should establish whether the evidence indicates:

- The allegation was made merely for the purpose of vexing or annoying or embarrassing a person;
- The allegation was calculated to lead to no practical result;

- The probable presence of bad faith on the part of the person making the allegation which can be indicated by an intention to mislead the investigator or the presence of ill-will.

Definitions

Vexatious

Vexatious is defined by the Shorter Oxford English Dictionary as:

"Instituted without sufficient grounds for the purpose of causing trouble or annoyance."

Black's Law Dictionary defines vexatious as:

"Without reasonable or probable cause or excuse. When the party bringing the proceeding is not acting bona fide and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result, such a proceeding is often described as 'frivolous and vexatious' and the court may dismiss it on that ground..."

A harassment complaint should not be characterized as vexatious if the evidence demonstrates a reasonable basis for filing and pursuing it. This is one of the reasons why the screening process to determine whether the complaint is admissible is crucial.

Bad faith

The standard for establishing that a harassment complaint was made in bad faith is high. It entails more than just poor judgment or negligence. It implies the conscious doing of a wrong for a dishonest purpose or due to moral underhandedness on the part of the complainant. It is characterized by an intention to mislead.

A complaint can be characterized as vexatious or made in bad faith if no practical outcome would be achieved by its pursuit. In such cases, there may be some indication that the same issues raised by the complainant were addressed by proceedings under another redress process for which a remedy has already been granted.

In determining whether a particular allegation is vexatious or made in bad faith, the investigator should determine whether there is any reasonable ground upon which the complaint can be substantiated. In other words, the investigation should establish whether the filing or the pursuit of an allegation is reasonable in light of the circumstances of the case.

Where there are no Witnesses or Documents

A situation where there are no witnesses or documents presents a real challenge for the investigator. This situation can occur when the alleged incident takes place in private, for example behind “closed doors” or when an employee meets a colleague outside of working hours, which may be the case in some sexual harassment situations.

What should be done when there are no witnesses to corroborate an allegation? One way to broach the subject is to rely on the degree of probability. If other similar incidents have been corroborated by witnesses, it may be more likely that the incident under review occurred. The investigator should carefully consider whether there are sufficient elements to make the alleged behaviour believable.

To determine the likelihood of the allegations, the investigator should consider the following questions:

- Are the facts plausible?
- Do the facts flow logically?
- Are the facts well explained?
- Are the facts sufficiently detailed?

Factors that affect the credibility of the source (witness) include:

- Direct, firsthand knowledge of the allegations;
- Expertise in the relevant subject area;
- Level of maturity;
- Status of the source;
- Relationship between the source and the parties; and
- Consistency or contradictions in testimony.

The Report

The investigator is ready to move to Stage Six – the Investigation Report – once he or she has established whether:

- The alleged conduct occurred, based on the balance of probability;
- There were any underlying factors that may have contributed to the situation (if required by the mandate); and
- The conduct meets the definition of harassment, in accordance with the Policy.

Stage Six: The Investigation Report

Content of the Investigation Report

An investigation report sets out the allegations, a logical description of the facts, an analysis of each incident, and a conclusion. Ideally, the report should be tendered in accordance with the format laid out in [Annex 10 \(hig04-eng.asp#an10\)](#).

At an earlier stage, the preliminary summary of facts would have already been disclosed to the parties. If the comments from the parties do not justify any additional investigative actions, the investigator writes the investigation report in consideration of these comments. In reading the final report, the person responsible for managing the harassment complaint process must be able to readily understand the allegations, issues, and observations as well as the analysis and conclusions.

At the end of the investigation process and once the person responsible for managing the harassment complaint process receives a copy of the investigation report, he or she will need to review the relevant information and decide whether or not to accept the conclusions of the investigator. To do this, he or she has to be able to make a reasoned decision that is based, among other things, on the facts, analysis and conclusions in the report.

It is imperative that the report present the relevant information gathered through the investigation objectively and logically. The parties will more readily accept a decision that is well-reasoned and clearly written, thereby mitigating the risk that the report will be challenged.

The person responsible for managing the harassment complaint process will consider whether procedural fairness has been respected, the soundness of the facts and the reasonableness of the analysis and the conclusions. It is the responsibility of the person responsible for managing the harassment complaint process to communicate his or her decision to the parties and to disclose the investigation report in accordance with the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#).

The investigation report will be viewed by at least four people with specific needs and vastly different expectations:

1. The person responsible for managing the harassment complaint process who must approve its content and make a decision to accept or reject its conclusions;
2. The complainant,
3. The respondent; and
4. The manager, in consultation with a labour relations advisor, where disciplinary and/or corrective measures will be imposed.

Stage Seven: Administrative Closure

Submission of the Investigation Report to the Person Responsible for Managing the Harassment Complaint Process

Reviewing the Facts, Analysis and Conclusions

If the person responsible for managing the harassment complaint process does not fully accept or agree with the investigator's findings, he or she should provide a detailed written rationale to the parties explaining why.

Release of the Investigation Report

Responsibility for Release

The person responsible for managing the harassment complaint process is responsible for releasing the final investigation report to the parties. Before the report is released to the parties, it is subject to the provisions of the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>).

The person responsible for managing the harassment complaint process should inform the parties of his or her decision in writing without undue delay and provide them with a copy of the report. The decision letter constitutes administrative closure of the formal resolution process.

Reactions of the Parties to the Release

Following the release of the investigation report, it is possible that one of the parties will contact the investigator to communicate his or her dissatisfaction. If it relates to the content of the report, the investigator should refer the individual to the person responsible for managing the harassment complaint process.

If the person personally attacks the investigator, he or she should remain calm and demonstrate respect and dignity. If the person makes either implicit or explicit threats, the investigator should take note of them and immediately inform the person responsible for managing the harassment complaint process or if they are criminal in nature, contact local authorities. In the case of an internal investigator who is personally affected by comments made, he or she can also contact a representative from the Employee Assistance Program for support.

Challenges to the Investigation Report

Parties who are dissatisfied with the investigation report may challenge it through different means:

1. By applying for judicial review to the Federal Court of Canada;

From the *Federal Court Law* - Subsection 18.1, Grounds for review

The Trial Division may grant relief if it is satisfied that the federal board, commission or other tribunal:

- acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
 - erred in law in making a decision or an order, whether or not the error appears on the face of the record;
 - based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
 - acted, or failed to act, by reason of fraud or perjured evidence; or
 - acted in any other way that was contrary to law.
2. By filing a grievance in accordance with the grievance procedure under the employee's collective agreement, if applicable.
 3. By filing a complaint with the Canadian Human Rights Commission if a prohibited ground of discrimination was a factor.

Annex 1 - Sample Investigation Mandate

I. Purpose of this Mandate

The purpose of this investigation mandate is to:

- a. Establish the terms and conditions in accordance with which this investigation is to be conducted; and
- b. Outline the authorities of the investigator to interview the parties and witnesses, and to view and collect any information or documents needed for this purpose.

Investigator

Name: [name]

Company: [company]

Person Responsible for Managing the Harassment Complaint Process

Name: [name]

Title: [title]

II. Allegation(s) to be Investigated

Investigation of harassment allegation(s) by [name of the complainant] in regard to harassment allegedly committed by [name of the respondent].

The allegations to be investigated are attached to this mandate.

III. Scope of the Investigation;

[Subject to the provisions in the professional services contract], the investigator shall conduct the investigation of the allegation(s) attached to this mandate.

The investigator will investigate to determine whether there has been a breach of the Treasury Board *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041§ion=text>) in accordance with the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>) and the accompanying Investigation Guide.

The investigator will conduct the investigation in accordance with the principles of procedural fairness while using his or her discretionary power to conduct the investigation in the manner deemed most appropriate.

The investigator will limit the investigation to the allegations referred by the person responsible for managing the harassment complaint process. In the event that additional allegations are raised during the course of the investigation, such allegations are to be submitted to the person responsible for managing the harassment complaint process to determine whether they should be considered as part of the mandate for the investigation. If these allegations are accepted as part of the investigation, they are to be presented in writing by the person responsible for managing the harassment complaint process to the respondent and the investigator's mandate will be amended accordingly.

IV. Investigation Process

The investigator will review the allegations attached hereto and any additional allegations accepted by the person responsible for managing the harassment complaint process to ensure that all relevant documentation has been identified. The investigator will also review all documentation and responses, as applicable. He or she will then submit an investigation plan to the person responsible for managing the harassment complaint process.

The person responsible for managing the harassment complaint process may designate a person of his or her choosing (such as a departmental harassment advisor) to assist with the administrative aspect of the investigation such as assisting the investigator in arranging interview schedules and meeting locations. The investigator will ensure that the parties have been notified of their right to be accompanied during the investigation process and of the importance of maintaining confidentiality.

The investigator will provide the parties and witnesses with the opportunity to be heard and conduct all interviews in a fair, impartial and professional manner. He or she will ensure that witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.

The investigator will take every reasonable precaution to ensure that the investigative process is carried out with due diligence and respect for the rights of those being interviewed and to perform these duties within the confines of the law.

The investigator will inform the person responsible for managing the harassment complaint process in the event that the parties, the persons accompanying them or the witnesses do not fully cooperate in or jeopardize the process.

V. Reporting:

The investigator will provide the person responsible for managing the harassment complaint process verbal progress reports on the status of the investigation at regular intervals or at the request of the person responsible for managing the harassment complaint process to allow him or her to monitor the timeliness of the process and to ensure that the mandate is being adhered to.

Upon completion of the initial interview phase, the investigator will submit a preliminary summary of facts outlining the evidence and the facts of the case to the person responsible for managing the harassment complaint process.

He or she will then provide the parties with a copy of the preliminary summary of facts, once they have been reviewed by the organization to ensure adherence to the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>), and provide them with an opportunity to make comments regarding accuracy and completeness and to provide additional relevant information.

The investigator will examine all the information submitted by the parties as well as the other evidence gathered during the investigation. He or she will provide a thorough analysis of the evidence in the investigation report.

The investigator will use the criteria contained in the Policy on Harassment Prevention and Resolution (</pol/doc-eng.aspx?id=26041§ion=text>) and the Directive on the Harassment Complaint Process (</pol/doc-eng.aspx?id=26040§ion=text>), in order to conclude whether there has been a breach of the Policy by establishing whether:

- The allegations are founded in whole or in part; or
- The allegations are not founded.

The investigator will submit the investigation report to the person responsible for managing the harassment complaint process in a timely manner. He or she will complete the investigation report even if the parties or witnesses refuse to cooperate in the investigation process and shall indicate the reason, if any, for such refusal. If applicable, the investigator's report will also include the reasons for which a witness proposed by either of the parties was not interviewed.

Copies of the investigation report will be provided to the parties, by the person responsible for managing the harassment complaint process once the report has been reviewed by the organization to ensure adherence to the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>).

A final decision to accept or not the conclusions of the report will be made by the person responsible for managing the harassment complaint process based on the findings of the investigation report.

VI. Additional Requirements

(Optional: The following paragraphs can be inserted and amended based on the specific needs of the organization)

The investigator will also make a determination on whether the allegations are vexatious or made in bad faith. The investigator will also comment on underlying workplace factors that may have contributed to the situation.

VII. Documentation

Supporting documentation and relevant submissions collected by the investigator will be included and clearly identified as an Appendix to the investigation report.

At the conclusion of the investigation, the investigator will submit the investigation file including all information and documentation collected in the course of the investigation to the person responsible for managing the harassment complaint process.

VIII. Confidentiality and Disclosure

The investigator shall conduct the investigation with the utmost discretion.

The investigator will take every reasonable precaution to safeguard, secure and protect all information, documentation and materials that may come into his or her possession while investigating the allegations.

The person responsible for managing the harassment complaint process will ensure in advance that the parties and witnesses are provided with a copy of the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041§ion=text)* and the *Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text)*, and are advised of their rights and responsibilities with respect to the investigation, particularly attendance at interviews, accompaniment and confidentiality.

The investigator cannot guarantee the parties or witnesses that conversations or information communicated during the course of the investigation will remain confidential. Anyone interviewed during the investigation must be informed that his or her name will appear in the investigator's report and that the information provided may be disclosed in the investigation report.

The investigator must compile and communicate all information in compliance with the *Privacy Act (http://laws-lois.justice.gc.ca/eng/acts/P-21/)* and the *Access to Information Act (http://laws-lois.justice.gc.ca/eng/acts/A-1/)*.

IX. Informal Resolution Process

If a request for informal resolution such as mediation is made by one of the parties, the investigator will inform the person responsible for managing the harassment complaint process. If an informal resolution process is commenced to resolve the allegations, the investigation will be suspended by the person responsible for managing the harassment complaint process.

The investigator shall not participate, under any circumstances, in the informal conflict resolution process or attempt to obtain or use information disclosed in the context of an informal resolution process if the investigation resumes.

If the parties do not expeditiously resolve the situation through informal resolution, the person responsible for managing the harassment complaint process will inform the investigator that the investigation will resume. If the parties resolve the situation informally, the investigation will be terminated and all documentation will be returned to the person responsible for managing the harassment complaint process.

X. Timeframes:

It is recognized by all parties that this Mandate may be terminated or extended at any time at the direction of the person responsible for managing the harassment complaint process.

The investigation report will be submitted to the person responsible for managing the harassment complaint process on a date not later than [date].

In Witness Whereof this mandate is accepted and signed, at [city], this [day] day of the month of [month] [20].

[Person Responsible for Managing the Harassment Complaint Process]

[Investigator(s)]

Annex 2 - Investigator's Checklist

- Obtain and review mandate, seek clarification if needed
- Review the written allegations and response to allegations
- Review the applicable policies, legislation and jurisprudence, as applicable
- Develop an investigation plan and provide a copy to the person responsible for managing the harassment complaint process
- Meet with the complainant
- Meet with the respondent
- Explain the parties' rights and responsibilities with respect to the investigation
- Record the parties' statements and have them date and sign them
- Meet with the witnesses
- Record the witnesses' statements and have them date and sign them
- Review and adapt your investigation plan, as needed
- Proceed with further interviews, as needed
- Visit the premises, if relevant and appropriate

- Provide the person responsible for managing the harassment complaint process with periodic verbal progress reports
- Prepare the preliminary summary of facts and submit it to the person responsible for managing the harassment complaint process for onward submission and review by the parties
- Obtain and review comments and submissions from the parties
- Assess whether further investigation is warranted
- Analyze the evidence
- Prepare the investigation report and present it to the person responsible for managing the harassment complaint process
- Submit the investigation file to the organization

Annex 3 - Preparing an Investigation Plan

The following key elements should be considered and included in the investigation plan before proceeding with the investigation.

Definition of the Subject(s)/Issues

- What are the allegations?
- Are there any other questions or points that require clarification?

The Required Elements for Determining a Breach of the Policy

- What elements must be proven to determine that there has been a breach of the Policy?

Logistics

- Where will the interviews be conducted?
- Are there any special accommodations required?

Information Critical to the Investigation

- What documents or records will need to be examined?
- Which witnesses or experts will need to be questioned?
- What is their relevance to the allegations?
- In what order will they be questioned?

- What policies and/or directives will need to be reviewed?

Key Areas of Inquiry

- How will the questions be tailored to each specific event or subject?
- What extent of questioning will be required to determine a particular issue?
- What issues will be likely to require follow-up depending on the answers given?

Order in which the Information Should be Obtained

- In what order should the information be gathered?
- Should some records be reviewed before certain witnesses are questioned?
- Should some witnesses be interviewed before others?

Annex 4 - Interviewing Tips

Introduction

Questioning the parties and witnesses in a harassment situation is a sensitive task. There is an enormous amount of emotion involved; some interviewees may be quite uncooperative, others aggressive. In the absence of familiarity with the person who will be interviewed, the investigator should be cautious and try to anticipate a wide array of possible reactions during the interview. It is imperative that the investigator demonstrate objectivity throughout the interview. The most successful interviews entail gaining the trust of the person being interviewed. The investigator should attempt, as much as possible, to establish a climate of trust as early as possible in the interview. Preparation is key and these interviewing tips are meant to help prepare the investigator.

Throughout the investigation process, the investigator must ensure that procedural fairness is respected and refrain from behaving in a way that could be seen to jeopardize that notion. The role of the investigator is to review the matter in an objective manner. He or she must be prepared to consider all of the versions of the events giving rise to the allegations. At the same time, it is important to consider how the parties and witnesses presented their version of events because their approach and demeanour may affect the way that information is interpreted.

Six Key Questions

Establishing facts is contingent upon obtaining responses to six key questions:

Who? What? Where When? Why? How?

In order for the investigator to be in the best position to answer those questions, he or she should develop a plan that can be used to guide and simplify the interview process. In doing so, it is important to determine beforehand:

- The date, time and place for the interviews;
- The order in which the parties and witnesses will be questioned;
- The questions and the order in which the investigator will ask them for each interview; and
- How much time the investigator intends to allow for each interview so that he or she can prepare a schedule accordingly.

It is important to keep in mind that the plan is only a guide and it is far more important for the investigator to be able to adapt his or her questions or approach as the interview unfolds. For example, a new or unexpected piece of information can shed new light on the situation and may warrant a shift in direction; the investigator can adapt by asking additional questions and requesting clarification or additional details. New information can also mean that the investigator will need to go back and interview the parties or previous or new witnesses.

Understand the Organizational Structure and the Workplace

If the investigator is not familiar with the structure of the organization or with the layout of the workplace and this information is relevant to the allegations, he or she should request an organization chart or floor plan to help situate the parties and understand the location of where the events allegedly occurred. In addition, if deemed necessary, the investigator can do a site visit before the interviews. Whenever practicable, these visits should occur in the absence of employees, outside regular office hours so as not to disturb or distract the employees.

Choose an Appropriate Location

The choice of location for the interviews is critical since it allows investigators to create an atmosphere conducive to trust, comfort and openness. Such locations should be quiet, very private and neutral (i.e. not in one of the parties' offices or at their home).

Establish Contact

The investigator should determine, in advance, whether the interviewee has any special needs that will need to be accommodated during the interview and ensure that they are able to participate in the language of their choice. The investigator should also take this opportunity to remind the interviewee of his or her rights and responsibilities and ensure that they are understood (e.g. information disclosed will not be considered confidential, right to be accompanied, importance of not sharing testimony or allegations with others, etc.)

Explain the Interview Protocol

At the beginning of the interview, the investigator should explain how the interview will be conducted and what is expected from the interviewee. He or she should also verify that he or she clearly understands the purpose of the interview. At this point, it would be a good idea to allow the person to ask any questions they might have.

The investigator should also explain he/she cannot ensure the confidentiality of the testimony because the parties have the right to know what has been said about them and by whom.

Accompaniment

If one of the parties is accompanied by a union representative, a non-represented employee advisor, legal counsel, or any other person of their choice, the investigator should clarify this person's role at the outset of the interview.

If the parties attempt to bring more than one person to accompany them, the investigator should ask why they feel this is necessary and determine whether this presence is justified. The investigator is entitled to request the exclusion of observers if the process will be hindered in some way.

The accompanying person may not answer questions for the person being interviewed or inhibit the proceedings in any way. His or her role is to provide support and guidance to the person being interviewed. The role of advisors can be summed up as follows:

- To help the person they accompany gather and present evidence;
- To help the parties draft their allegations and respond to those allegations;
- To help the person they accompany to determine the appropriateness of informal conflict resolution;
- To make themselves available so that the investigation can proceed in a timely manner;

- To prepare the person they accompany for the interview by helping him or her present the facts in a logical and coherent fashion;
- To attend the interview and provide moral support to the person they accompany;
- To encourage the person they accompany to remain calm and objective and if necessary, request a caucus or an adjournment;
- To help the person they accompany to manage anger or frustration; and
- To review the preliminary summary of facts and ensure procedural fairness has been observed.

Records of the Interview

The investigator should inform the interviewee that he or she will take notes during the interview and explain the reasons for taking notes:

- To ensure a common understanding of what was said;
- To have a record of the exchange;
- To assist in compiling the report; and
- For verification at a later date.

The use of video or audio recording devices is not advisable. This practice is not conducive to building an atmosphere of trust and may serve to intimidate interviewees who are already experiencing stress and anxiety about the interview. Under such circumstances, they may have a tendency to withhold information. Moreover, the investigator must be prepared to provide, upon request, copies of these transcripts which can be very costly and time consuming.

Managing the Interview

The investigator is responsible for the interview and should have some degree of control over the proceedings. However, the investigator cannot guarantee certain factors such as the outcome of the interview, the interviewees' participation or the accuracy of their statements. While the investigator leads the interview, his or her role should consist primarily of listening to the parties and witnesses.

Investigators should demonstrate active listening skills. This could include:

- Showing open body language (e.g. arms uncrossed, facing the interviewee, etc.); and
- Making eye contact and acknowledging comments made by the interviewee (e.g. nodding, verbal cues, etc.).

There may be situations where the interviewee attempts to invoke a strong reaction from the investigator; it is important that the investigator avoid being provoked. The investigator must concentrate on obtaining all of the information that is required to better understand the situation under investigation. If the person being questioned contradicts him or herself or one of the other witnesses or parties, clarifying questions could be asked to help the investigator weigh the information.

During the course of an investigation, it is not uncommon for the parties and the witnesses to demonstrate strong emotions such as fear, stress, anger and frustration. The investigator should know how to recognize these emotions, show empathy (not sympathy) toward the interviewee and re-establish a stable and comfortable atmosphere for the interview. If it is determined that it would not be appropriate to continue the interview or that a break is warranted, either by the investigator or by at the request of the interviewee, the investigator should not hesitate to suspend or reschedule the interview at a time that is mutually convenient.

Questioning

The order and type of questions that will be asked during the interview should be determined beforehand. At the beginning of the interview, it is a good idea to begin with conciliatory questions that are less likely to be invoke strong emotions. After a few introductory remarks, the investigator can begin by asking the interviewee routine questions such as his or her full name, position, group, level, work telephone number, and section within the organization.

At some point in the interview, the investigator should ask the interviewee to describe the incidents or behaviour relating to the allegations and ask him or her to explain any related workplace norms, if deemed relevant. The focus of the investigator should be on obtaining facts and direct evidence – not hearsay. This is important because the investigation report must reflect the facts.

Generally, the investigator should not share the allegations with the interviewee during the interview. The allegation is the personal information of the parties and their privacy must be respected to the greatest extent possible. In the case where the allegation may have to be disclosed to a witness, the investigator should state that, *"It has been alleged that... Would you please comment?"* Also, the investigator should not reveal information discovered from other sources. Such information may prejudice the response and could violate the privacy of the person who provided it.

Recap

At the conclusion of the interview, the investigator can provide a brief recap to ensure that the person agrees with the investigator's understanding of what was said. The investigator should also ask the interviewee whether he or she has anything to add.

In addition, the investigator must have the interviewee verify and sign his or her notes to ensure their accuracy. If the investigator prefers to have the interviewee sign a statement at a later date, he or she should inform the interviewee accordingly and have it signed by him or her at this time.

Some Final Tips for the Investigator

- Bring a copy of your mandate to the interview. There may be times when you have to refer to it or even show it, either to identify yourself or to assert your investigative authority.
- Refrain from allowing any interruptions during the interview such as telephones or other electronic devices unless this has been agreed to beforehand.
- For the comfort of the interviewee, ensure that water and tissues are available during the interview and that the room is comfortable and conducive to this type of exchange. For example, consider lighting, seating, noise level, level of privacy, accommodation needs, etc.).
- To the greatest extent possible, schedule your interviews to ensure that you have sufficient time to prepare for the interview, interview the parties and witnesses, complete your notes and reflect on the outcome of the interview. *"Memory is the faculty that forgets."*
- Number your pages of handwritten notes during the interviews.
- Remember that your notes could be accessed at a later date and so anything you record should be written with this in mind.
- The interviewee is not normally provided with a copy of your notes. This is in part to ensure the integrity of the investigation process.
- He or she will be allowed to review and sign a statement which will then be put on the investigation file.
- At no point during the interview should you exit the interview room and leave your notes or documents unattended.
- Refrain from expressing surprise, distrust or disbelief; maintain objectivity and impartiality.
- In cases where there is tension, fatigue or strong emotions, suggest breaks or spread your interview over more than a day.

Annex 5 - Interview Protocol

At the Beginning of the Interview:

1. Welcome the interviewee and the person accompanying him or her (if present), noting the latter's name in the file.
2. Provide a brief explanation of the context of the investigation, taking into account that the allegations should not be shared with the witnesses as they are confidential and considered to be the personal information of the parties.
3. Explain the role of the investigator; his or her neutrality and impartiality with regard to the allegations, and the requirements of the mandate (have a copy of the mandate).
4. Confirm that the interviewee has been informed of his or her rights and obligations under the Policy. If interviewing the respondent, confirm that he or she has received a copy of the allegations and has been invited to respond to it in writing.
5. Inform the interviewee that all relevant information communicated during the interview will be documented and that no information can be considered confidential in the context of the investigation. Furthermore, witnesses cannot be given anonymity.
6. Explain how the interview will be conducted and the roles and responsibilities of any person accompanying the interviewee, including the importance of discretion in relation to the information revealed during the interview.
7. Explain the process of validating the notes taken by the investigator during the interview. For example will they be presented to the interviewee at the end of the interview for his or her signature or will they be transcribed and presented for validation and signature at a later date?
8. Ask the interviewee to provide his or her title, position and brief work history (if relevant), as well as their working relationship with the parties. This information should be recorded in the investigator's notes.
9. Permit the interviewee the opportunity to ask questions about the interview and subsequent process.
10. Ask the interviewee if he or she is ready to proceed, and ask the questions.

At the End of the Interview:

1. Ask the interviewee if he or she has any questions or anything to add.
2. Remind him or her about the obligations of confidentiality and discretion that are essential to a fair investigation procedure for the parties and the importance of not discussing the allegations or the interview with the parties or any other person.

3. Make any necessary arrangements to meet at a later date, if necessary, so that the interviewee can review and sign his or her statement.
4. If another interview will be required, schedule the interview at a time that is mutually convenient.

Annex 6 - Note Taking

Note Taking

Remember that much of the information collected in the course of the investigation is subject to the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>) and may be accessed by the parties at a later date. The investigator must be careful to only record facts. Moreover, the persons interviewed can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to submission of the investigation report.

During the interview, the investigator should weigh the information provided by the parties and witnesses. In gathering the evidence, the investigator should be able to weigh the importance of the information provided. For example, is it direct evidence, opinion or hearsay? Gaps or weaknesses in evidence will require further investigation before accurate conclusions can be drawn.

The investigator's notes are of vital importance to the investigation. What follows is a list of considerations that should be taken into account in recording notes so as to avoid complications following an investigation:

- Subject to the Access to Information Act (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>) and the Privacy Act (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>), notes may be accessed by the parties;
- The collection and recording of notes should reflect the principles of procedural fairness;
- Poorly written notes, which can be characterised by a lack of detail, bias or inaccuracies, may lead the participants to question the integrity of the process;
- Poorly written notes may have to be corrected and could lead to challenges, thereby throwing the investigative process into disrepute; and
- Poorly written notes will prove difficult to interpret and analyse for the purpose of writing the preliminary summary of facts.
- Good quality notes can be characterized as:
 - Written in neutral language;

- Organized coherently to facilitate the writing of the preliminary summary of facts;
- Signed by the interviewee, if applicable; and
- Bearing the security designation of PROTECTED "B".

What are Some Suggested Note-Taking Practices?

- Identify the witness' name, address, telephone number, fax number and e-mail address, as applicable;
- Clarify the witness' title (both at the time of the alleged incidents and at the present time) and his or her role within the organization;
- Specify which party identified the witness;
- Identify the issues discussed including the date, time and location of any alleged incidents;
- If the witness relies on documentary evidence or makes reference to a document, include this document in the file, if appropriate; and
- Determine whether the evidence provided by the witness is direct evidence, opinion or hearsay and record the facts.

What Note-Taking Practices should be avoided?

- Recording your personal opinions or value judgments about the witness or information that was disclosed to the investigator.
- Recording too much information, including irrelevant information.
- Overuse of abbreviations, acronyms or symbols. The information should be easily understood by a third party.
- Attempting to diagnose the physical or psychological health of the person being interviewed; investigators do not possess such expertise.

Annex 7 - Analyzing the Facts

Compare Similarities and Differences

All statements made by interviewees should be compared to identify similarities (those accounts which are strikingly similar) and differences (those accounts which bear major discrepancies).

The investigator will need to gain a clear understanding of the facts, based on the evidence compiled. In order to do this, the investigator will compare the statements provided by the parties and the witnesses to uncover where the similarities and the differences lie.

While the various statements of the alleged incidents may bear certain similarities, it is equally possible for the perceptions of those involved to vary considerably. If there are important differences in testimony, the investigator should weigh it according to the validity or strength of the information (e.g. direct, firsthand evidence vs. hearsay, personal perceptions) and the credibility of the witnesses. If the statements of the parties are in conflict, the investigator should review the witnesses' versions to determine whether they serve to support or refute either party's statement and to what extent. For example, if a majority of the witnesses interviewed support the allegations, the investigator may reasonably conclude that the allegations are more than likely to have occurred. However, the number of witnesses that support a version of events should not be the only consideration; the investigator should also consider whether their testimony is credible and whether there is other supporting evidence.

Create a Chronological Description of Key Evidence

A chronological description will help establish the sequence of events related to the allegations and can be a useful tool for preparing the analysis. The information should be organized in chronological order according to the allegations and the evidence that either supports or refutes these allegations.

Once completed, the description should be reviewed to identify any gaps or inaccuracies which may require further investigation.

The following chart can be used to record the chronological description related to the allegations and can prove to be a useful tool in preparing the analysis.

Date & Time	Alleged Incidents	Description of Evidence
-------------	-------------------	-------------------------

Weigh the Information

Once all of the information is collected, it should be weighted against the following considerations:

- How important is the evidence?
- What is the relevance of the fact to the allegation?
- Does it prove or disprove the allegation?
- If the evidence is not directly related to the allegation, does it reveal other important information or lead to another source?
- Are there gaps or inaccuracies that require further investigation?

It is important to note that the fact that evidence may not appear to be relevant at the time that it is revealed to the investigator does not mean that it may not gain importance at a later stage in the investigation.

In determining the accuracy of evidence provided, the investigator should identify whether there is conflicting information and seek additional sources to establish whether the evidence is valid or not. The investigator will need to reconcile the data while also taking into consideration the fact that it is natural for witnesses to observe and remember situations differently given the subjectivity of the perceptions of each individual. The more time that elapses, the more difficult it is for people to recollect events clearly.

In determining the credibility of the witness, the investigator should consider whether the witness has provided direct or first hand knowledge of the incidents or whether the witnesses is providing a personal opinion or repeating hearsay. A credible witness is one that is believed to be telling the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

In examining the facts, the investigator should examine each piece of information individually and as a whole. Information that could be considered weak if viewed on its own might be strengthened by supporting evidence. On the other hand, evidence that appears strong on its face can be weakened by the provision of contradictory evidence.

Important Principles for the Investigator to Consider

Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the investigator is still required to draw a conclusion. In order to determine that the allegation is founded, the evidence must demonstrate on a balance of probability that the allegation is likely to have occurred. In the absence of such evidence, the investigator must conclude that the allegation is not founded. The complainant bears the onus of proof and the standard of proof is "more likely than not", in assessing if that person has been subjected to workplace harassment. Drawing such conclusions can be especially challenging in situations where two people present different versions of incidents. However, two conflicting views should not necessarily lead the investigator to conclude that the allegations are not founded. Rather, each account should be carefully

assessed in light of all of the other information and evidence collected. Facts analysis is more than a counting game; the number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of information may outweigh a larger number of weaker pieces of information. The investigator must be able to account for and explain the different weight allotted to the evidence collected.

Furthermore, when analyzing the evidence the investigator should avoid trying to read into the motives of the person against whom the allegations are made, unless there is evidence to demonstrate that malicious intent was indeed a factor. In situations involving allegations of abuse of authority, the intent of the manager may be an important factor in determining whether he or she harassed a subordinate. For example, if the manager was carrying out his or her managerial responsibilities in an appropriate manner with no express intent to harm his or her subordinate but rather to achieve a legitimate performance management objective; this should be taken into account in determining whether his or her actions constituted harassment.

In most cases, the intent of person alleged to have harassed another should not be a factor in determining whether harassment occurred. While the intent to harass another individual may be an aggravating factor for the manager in determining appropriate corrective and/or disciplinary measures, the investigator should not be overly concerned with this aspect of the allegation. The investigator must simply apply the criteria identified in this Guide to determine whether the behaviour meets the definition of harassment.

Identify Areas that Require Further Inquiry

The investigator should ensure that he or she has collected the information required by the Mandate, including information to support or refute each individual allegation. In the absence of this, the investigator will need to determine the reason for the lack of information – e.g. lack of sources, limited scope of questioning or witnesses, poor understanding of the issues or allegations, etc.

If collecting further information is not feasible, the investigator will have to describe what information is lacking and how it affects the outcome of the investigation. If the evidence does not demonstrate on the balance of probability that an allegation is founded, it should be deemed unfounded in accordance with the burden and standard of proof required in harassment situations.

The following table may prove useful in helping the investigator reconcile evidence that is conflicting or inconclusive. It can be completed for each allegation in order to identify the discrepancies or gaps in evidence.

Consolidated Analysis

Allegation #1		Factual vs. Perception				
Version	Similarities	Differences	Explanations	Direct Knowledge of Events	Status of Source	
Complainant	<i>Alleges harassment</i>					
Respondent	<i>Denies the conduct</i>					
Witness #1	<i>Saw the alleged conduct</i>			Yes, was in the room		
Witness #2	<i>Did not see the alleged conduct</i>			No, was in the hallway		
Documents	<i>None used</i>					
Physical Information	<i>None used</i>					

Allegation #2		Factual vs. Perception				
Version	Similarities	Differences	Explanations	Direct Knowledge of Events	Status of Source	
Complainant	<i>Alleges harassment</i>					
Respondent	<i>Denies the conduct</i>					
Witness #1	<i>Saw the email</i>			After the fact		
Witness #2	<i>Saw the email</i>			After the fact		
Documents	<i>Email</i>					
Physical Information	<i>None used</i>					

Annex 8 - Preliminary Summary of Facts

[Name of the Organization]

PROTECTED "B"

File No. -

Preliminary Summary of Facts

Further to harassment allegations made by [Name of the complainant, title, section, division] regarding [Name of the respondent, title, section, division], this preliminary summary of facts is submitted in accordance with the terms and conditions of the mandate assigned to the below-mentioned investigator.

[Investigator Signature]

[Name of the investigator]

[Date]

Body of the Summary

The interviews were held at (location) between (dates) and the following persons were interviewed:

- The complainant [name, title, organization], accompanied by [name, title, organization];
- The respondent [name, title, organization], accompanied by [name, title, organization]; and
- The witnesses, [name, title, organization].

The following documents were reviewed:

- The allegations of harassment;
- The organization chart; and
- The *Policy on Harassment Prevention and Resolution* (</pol/doc-eng.aspx?id=26041§ion=text>) and the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>)

Mandate

The first paragraph of the preliminary summary of facts indicates the basis upon which the investigation is conducted and provides information about the parties.

Example:

"This investigation is conducted under the Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041§ion=text) and Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text), pursuant to allegations of workplace harassment made by [name and title of complainant] regarding [name and title of respondent]."

The investigator then describes the mandate and the name of the person responsible for managing the harassment complaint process.

Example:

"On [date], [Name of person responsible for managing the harassment complaint process], assigned to [Name of investigator] the mandate to investigate allegations of workplace harassment between the parties named above. This investigation was conducted according to the Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041§ion=text) and the Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text)."

Background

The purpose of this section is to provide general information about the allegations. The information must be factual and relate directly to the allegations. Usually, it contains information such as general data about the parties, the workplace, a brief background of the situation, a list of witnesses and, if necessary, a reference to an organization chart. For example, the investigator might situate the parties in relation to the organization chart and describe their working relationship with each other. In addition, the investigator could summarize the allegations including any preceding incidents or events and the nature of the allegations, the reported impact on the complainant.

Preliminary Objections (if applicable)

During the interviews with the parties, the investigator may receive preliminary objections from them. It is recommended that the investigator discuss these objections with the person responsible for managing the harassment complaint process and address these objections accordingly. For the most part, such objections should not delay the fact gathering process. However, if the objections raised concern over the application of procedural fairness, such as an alleged breach of impartiality, the investigator must promptly deal with it in conjunction with the person responsible for managing the harassment complaint process.

The Allegations

The allegations must reflect those put forth by the complainant which would have accompanied the investigator's mandate, and any additional allegations approved by the person responsible for managing the harassment complaint process and reviewed by the respondent.

The Purpose of the Investigation

Clearly identify the issue that is to be decided through investigation.

Example:

"Did [Name of the respondent] harass [Name of complainant] in the workplace?"

The Facts

This part can vary in length and detail depending on the nature and complexity of the allegations.

With all this information in mind, the investigator should write the summary in a way that gives the reader enough information about each allegation in a way that is easily understood and logical. The preliminary summary of facts must present both parties' version of the facts as well as the witnesses' testimony. It must also present any relevant information obtained through documentary evidence.

The role of the investigator is not to repeat verbatim every single piece of information communicated by the parties and witnesses in the course of the investigation but to sort through the information and filter it according to its relevance to the allegations. He or she must separate what is relevant from what is not, group the information by allegation and distinguish facts from opinions. Any information that does not specifically relate to the investigation but warrants attention from management should be brought to the attention of the person responsible for managing the harassment complaint process at the earliest opportunity and should not be included in the preliminary summary of facts unless specifically instructed by the mandate.

The investigator must set aside evidence that would be inadmissible in law by reason of:

- Rules related to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. client-solicitor); and
- Laws protecting the confidentiality of medical records or any other documents from medical practitioners.

To ensure that adequate information is included in the preliminary summary of facts, the investigator should consider whether:

- There are sufficiently detailed notes of the statements of the parties and witnesses;
- The appropriate persons were interviewed and whether the right questions were asked; and
- There is sufficient information upon which to conclude whether harassment did or did not occur.

If there are gaps in information, the credibility of the investigation will be significantly affected and every effort should be made to resolve these issues before the submission of the preliminary summary of facts.

Submission of the Preliminary Summary of Facts

The investigator submits the preliminary summary of facts to the person responsible for managing the harassment complaint process. Once it has been reviewed by the organization to ensure adherence to the *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1>) and the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/>), the latter will distribute a copy of the summary to the parties. This will allow them each an opportunity to make written submissions. For ease of reference, a sample letter to the parties disclosing the preliminary summary of facts is included at the end of this Annex.

Upon receipt of the summary, the parties are given a reasonable amount of time (10 working days) to respond to the information provided therein. The preliminary summary of facts is not meant to disclose every detail of the investigation, but rather the key facts that will form the basis of the decision as to whether the harassment allegations are founded or not; this will assist both the investigator and ultimately the person responsible for managing the harassment complaint process in rendering a decision.

If further investigation is required following the submission of the preliminary summary of facts, the investigator will be required to disclose any new or additional information that is obtained in the course of this investigative process if it will be used to substantiate the final report. Again, the parties should be given an opportunity to respond to this additional information.

After considering the parties' response to the preliminary summary of facts, the investigator analyzes the information and then prepares the investigation report which includes the analysis and conclusions of the investigation.

**SAMPLE LETTER
SUBMISSION OF THE PRELIMINARY SUMMARY OF FACTS
TO THE PARTIES**

PROTECTED "B"

[File No. -]

[Name of party]

[Party's address]

Dear [Name of party],

This is further to the allegations of workplace harassment by [Name of complainant] concerning [Name of respondent].

Please find attached a copy of the preliminary summary of facts which sets out the facts gathered through the investigation. The attached summary is a protected document that must be treated as confidential and shared only on a need-to-know basis.

If, after reviewing the summary, you wish to provide further information or dispute any information contained in the summary, you are asked to provide these comments in writing to the undersigned no later than [ten working days]. If your comments are not received by this date, you will be deemed to be in agreement with the summary. A copy of this summary has been provided to [Name of the other party] who has been given the same opportunity to comment.

Any submissions by the parties within the allotted timeframe will be taken into consideration before conclusion of the investigation and submission of the final report which will be forthcoming.

If you would like to obtain further information about this matter, please do not hesitate to contact me.

Yours truly,

[Name of the person responsible for managing the harassment complaint process]

[Title]

[Telephone number]

Attachment

Annex 9 - Report Writing

Characteristics of a Good Report

These objectives should be applied throughout the report-writing exercise, in order to ensure that the investigation report is concise and readable.

- The report must achieve its objective – to respond to the requirements of the mandate and answer the questions raised (i.e. are these allegations of harassment founded or not?).
- The report must be designed to meet the needs of the person responsible for managing the harassment complaint process.
- The report must be logical, sufficiently detailed and accurate. It should not include extraneous or irrelevant information or unsubstantiated opinions. The person responsible for managing the harassment complaint process must be able to rely on the facts set out in the report and render a decision accordingly.

The investigator should ensure that the structure of the report is clear for the reader so that he or she can easily access and reference the information. The pages should be clearly numbered, dates and witnesses should be accurate and there should not be any spelling or grammar mistakes. Failing to write in a clear and coherent fashion may cause the person responsible for managing the harassment complaint process to be concerned that other critical errors in the content or methodology could have occurred.

To the greatest extent possible, the investigator should rely on simple and direct language to describe the facts and to develop the analysis. The person responsible for managing the harassment complaint process will expect the facts to be clearly spelled out and the analysis to be sound.

As a general rule, the investigator should avoid using:

- Ambiguous language;
- Abbreviations or acronyms;
- Overly long or complex sentences;
- Characterisations or descriptions which could denote bias; and
- Medical, legal or overly technical terminology.

Finally, it is a good idea for the investigator to set aside the report for a day or two and then read it anew. This will enable him or her to more readily flag any gaps or errors.

Before submitting the report the investigator should consider the following questions:

- Would someone unfamiliar with the situation be able to easily understand the report?

- Is the report coherently and concisely written?
- Does the report satisfy the requirements of the mandate?

For a sample layout of the investigation report, please consult [Annex 10 \(hig04-eng.asp#an10\)](#) of this Guide.

Annex 10 - Investigation Report

PROTECTED "B"

File No: [...]

Cover Page

Investigation Report

Complainant: [complainant]

Respondent: [respondent]

Nature of the allegations:

(This a brief description of the type of allegations being made)

The allegations are attached to this report as Annex 1.

The mandate, including any subsequent amendments, is attached to this report as Annex 2.

The complainant was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The respondent was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The parties' responses are attached to this report as Annex 3.

Body of the report

Allegation(s)

[Name of the complainant] alleges that [Name of the respondent] harassed him/her in the workplace.

The allegations that formed the subject of this investigation are as follows:

(Reproduce the allegations)

Mandate

(The first paragraph of the body of the report indicates the basis upon which the investigation was conducted.)

The Investigation Procedure

(The next four sections essentially repeat the information produced in the preliminary summary of facts.)

The interviews were conducted in [location] from [date] to [date] at which point the following persons were interviewed:

The parties to the dispute:

[Name of the complainant] accompanied by [Name, title and organization of the person accompanying him or her].

[Name of the respondent] accompanied by [Name, title and organization of the person accompanying him or her].

The witnesses:

[Names, titles and organizations of the witnesses]

The following documents were considered:

Preliminary Objections

(If applicable)

Facts

In addition to the facts that appear in the preliminary summary of facts, the comments received following disclosure of the summary may also be included in the investigation report. It is the investigator's responsibility to determine which elements should be included. However, the comments of the parties should be included in this report if, following the responses from the parties to the preliminary summary of facts, the investigator had to reopen the investigation.

Analysis

The analysis section is found only in the final investigation report. The analysis brings together all of the salient evidence. The analysis should start with the description of the criteria to be met under the definition of Policy in order to conclude that there has been a breach of the Policy. The analysis is a critical component of the report; it requires sophisticated analysis on the part of the investigator who analyzes the evidence adduced and the arguments made by the parties, as well as any other relevant information gathered in the course of the investigation. The analysis must explain how the information gathered was assessed, and why the investigator reached a particular conclusion. Each allegation should be identified and analyzed separately and as a whole if there is an attempt to demonstrate a pattern of repetitive behaviour.

Note: Comments related to underlying workplace factors that may have led to the allegations can be included in the report if so required by the mandate.

Conclusion

In determining whether the alleged conduct constitutes harassment, the investigator must determine whether the conduct meets the criteria set out in the Policy.

For example:

1. Allegation [*Identify the alleged conduct*]

a. Evidence/Facts

"The evidence indicates that..."

b. Analysis

Example: "The conduct was improper in that...It was directed at and offensive to the person alleging harassment...the person knew or ought reasonably to have known that this conduct would cause offense of harm... it occurred within the workplace. Therefore, the allegation is founded."

Or

"The conduct was not improper in that..... Therefore, the allegation is not founded."

2. Allegation (*if applicable*)

a. Evidence/Facts

b. Analysis

Conclusions

In this section, the investigator summarizes his or her findings and draws conclusions with supporting rationale for each individual allegation. Investigation reports should include a section with conclusions to summarize the main points and highlight the essential information of the report. The conclusions are often considered the most helpful element of the report, because they succinctly clarify the findings.

With respect to the allegations, the findings should never be inconclusive. If the investigator determines that there is not sufficient evidence to conclude that the allegations are founded or partially founded, the investigator must find that the evidence does not support the allegations, consistent with the required burden and standard of proof.

The conclusions on each allegation must give readers a clear understanding that:

- on the balance of probabilities, the evidence available does (or does not) support the allegation(s);
- and if supported, the conduct does (or does not) satisfy the criteria for harassment as per the Policy.

The conclusions must not contain any surprises, that is, they must all relate to the allegations and evidence contained in the report. The conclusions must be coherent (logical and easy to follow), clear (written in plain language), concise, and appropriate to the facts as stated.

Example: "Given the above-noted evidence and in light of the available information, I conclude on the balance of probability that the allegations of harassment in the workplace made by [Name of the complainant] regarding [Name of respondent] are founded/not founded."

If the mandate required the investigator to identify issues, the investigator would also need to include this finding in the investigation report.

Example: It appears that roles and responsibilities of the parties are confusing and might be source of conflict between them. There seems to be an overlap in responsibilities which generates a conflict which has been ongoing for months.

Note: The investigator's report does not contain recommendations on what administrative, corrective/ restorative, and/or disciplinary action should be taken.

Investigator's Closing Declaration:

I declare that, in conducting this investigation, the rules of procedural fairness were observed. I ensured that the parties were reminded of their rights and obligations with respect to the investigation process and gave all those involved, including witnesses, the opportunity to verify their statements. I also declare that I took into account all the comments made by the parties in regard to the preliminary summary of facts in my assessment of this case and in the conclusions presented above.

[Signature]

[Date]

Annex 11 - Content and Disclosure of Harassment Investigation Reports

This information is intended to assist in determining the type of information that should be disclosed or withheld during the course of an investigation conducted under the Policy.

In accordance with the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041§ion=text)* and the *Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text)*, the parties to the harassment allegations (complainant and respondent) may expect to:

- Receive information related to the allegations in writing;
- Review a copy of the preliminary summary of facts for comment prior to the investigator's completion of the final report; and
- Be informed in writing of the outcome of the investigation and to receive a copy of the final report.

This means that, during the complaint process, these parties can generally expect to access their own personal information, which includes comments made about them by other individuals, as well as any other information (personal or otherwise) which is relevant to the investigation, the disclosure of which is consistent with resolving the complaint and ensuring a fair process.

Investigators should also be mindful that the information that they collect and record during the course of the investigation is subject to the *Access to Information Act (http://laws-lois.justice.gc.ca/eng/acts/A-1)* and the *Privacy Act (http://laws-lois.justice.gc.ca/eng/acts/P-21/)* and may be accessed by the parties and other individuals (subject to limited exceptions). Therefore, investigators should generally not make promises of confidentiality to any of the interviewed parties.

Moreover, investigators should not include the following type of data in their investigation

reports, unless it has a direct bearing on the outcome of the investigation:

- Private family, financial or medical data related to the parties involved in the allegations;
- The use of counseling services;
- Financial or other medical repercussions;
- Effects on other relationships;
- Personal identifiers (Social Insurance Numbers, Personnel Record Identifiers);
- Home addresses or phone numbers; and
- Any other data that has no bearing on the outcome of the investigation.

Failure to abide by this will require severing of the reports before copies may be provided to the parties to the harassment complaint in accordance with the Policy.

Annex 12 - Person Responsible for Managing the Harassment Complaint Process Checklist

Upon receiving the investigation report and before releasing it to the parties, the person responsible for managing the harassment complaint process should ensure that the following elements, including those which ensure procedural fairness, are present:

- The requirements of the mandate are sound and they have been fulfilled;
- The respondent was informed of the allegations;
- The investigator is independent and has no vested interest in the outcome of the investigation;
- The investigator approached the investigation with an open mind and did not prejudice any of the parties;
- The language used is impartial and unbiased;
- The parties were given an opportunity to be accompanied or assisted during the investigation;
- The parties were made aware of statements made about them;
- The parties were given an opportunity to provide corroborating evidence;
- The parties were given an opportunity to comment on adverse statements made by the other party and witnesses;
- The parties were given an opportunity to clarify contradictions in evidence;
- The methods used to gather facts and the presentation of the facts are sound;
- The key witnesses have been identified and interviewed;
- All relevant documents and policies have been examined;
- The key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how);

- The investigator properly identified gaps and challenged inconsistencies in evidence;
- The investigator filtered the information and only included information that directly relates to the allegations;
- The onus and burden of proof have been properly understood and applied;
- The degree of proof is sufficient to conclude that an allegation was more likely or less likely to have occurred (i.e. based on the balance of probability);
- The analysis and findings are based on the facts which have been disclosed to the parties;
- The analysis and findings are logical and relate directly to the allegations;
- The investigation report is concise and is not a complete retelling of the investigation;
- Spelling and grammar are correct and there are no critical inaccuracies (e.g. names of witnesses, dates, locations, terminology);
- The investigation report is well organized (i.e. evidence, analysis, conclusion);
- The investigation report does not contain information that has no relevance or bearing on the outcome of the investigation;
- The investigation report meets the requirements of the applicable access to information and privacy laws;

If any of these elements are in doubt, the person responsible for managing the harassment complaint process should contact the investigator to discuss and such shortcomings should be rectified.

Date modified:

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Guide on Applying the Harassment Resolution Process

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Who is this guide for?

This guide is primarily for those who are involved in the resolution of harassment related allegations such as designated officials, the person responsible for managing the complaint process, harassment prevention advisors, labour relation advisors and informal

conflict resolution practitioners. This guide may also be useful for employees and managers who share a responsibility in preventing and resolving harassment in the workplace.

Purpose of the guide

The objective is to provide contextual information and best practices related to the harassment resolution process, including the use of the informal resolution processes and the application of the formal harassment complaint process. These guidelines are intended to allow for flexibility in the tailoring of mechanisms and practices to the operational needs and culture of each organization while being mindful of the need to carry out the harassment complaint process in accordance with procedural fairness and the step-by-step process as outlined in the *Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text)*.

The Harassment Resolution Processes

The goal of the informal and formal processes is to resolve situations of alleged harassment as quickly as possible, in a fair, constructive and respectful manner. In many instances, using informal processes (also called collaborative problem-solving approaches), such as dialogue (facilitated or not) or mediation, offers the possibility of resolving many work related issues that may be harassment or perceived as harassment in a satisfactory manner, acceptable to both parties. Such an approach has the advantage of addressing the parties' needs, concerns and other interests rather than focusing on who is right and who is wrong. It empowers the parties to focus on solutions to meet their needs and often leads to the re-establishment of respectful working relationships.

The formal resolution process as outlined in the *Directive on the Harassment Complaint Process (/pol/doc-eng.aspx?id=26040§ion=text)* requires that a complaint be filed in writing and calls upon an impartial person to determine whether or not a person's rights have been infringed upon. This approach is sometimes necessary to protect an individual's rights, to shed light on the alleged incidents and to determine appropriate corrective and or disciplinary measures.

Although access to a formal resolution process is valuable to address allegations of harassment, it is not always the most efficient way to resolve issues. The formal resolution process is inherently adversarial (determining who is right and wrong rather than focusing on restoring relationships) and as a result, it is difficult to reconcile such a process with the

ultimate goal of restoring the workplace relationships once a decision has been rendered. For this reason, informal resolution processes should be encouraged whenever appropriate.

Informal Resolution Process

Whether or not a written complaint has been filed, an employee who experiences a workplace situation as harassment should be encouraged, if appropriate,¹ to make the situation known to the other person as constructively as possible in an attempt to resolve the situation. This could include the assistance of a resource person such as a coach, facilitator, advisor, mediator, manager/supervisor or union representative, to help prepare the employee for a meaningful conversation. The words chosen and the tone used to express issues and concerns, and the intent behind messages have an impact on how the recipient receives the information and responds.

If the problem is not resolved, or if one of the parties feels he or she cannot speak directly with the other person, other options such as a facilitated dialogue or mediation can be explored. Informal resolution processes can be effective in resolving issues related to harassment but require the willingness of the parties to participate. They are voluntary processes and cannot be forced on anyone. Frequently, however, a party's hesitation in agreeing to use them stems from the unknown. These processes may be unfamiliar to them and they may be uncertain that they will get "satisfaction" from the process. It is useful to the parties if they are given an explanation as to why a certain approach may be seen as the most appropriate for the situation and how both parties can benefit by using a collaborative problem-solving approach. Empathic listening is also helpful to get the parties' cooperation for giving consideration to collaborative problem-solving approaches. It allows for an authentic understanding of what they feel and need and helps bring to surface relevant information needed to assist them in resolving the situation. When we listen deeply for what people feel and need, we provide them with an opportunity to be "heard" and they ultimately become empowered and more willing to create solutions for themselves based on mutual respect and consensus.

If it appears that the time required to follow the informal process will be more than the **twelve month** time limit prescribed for the filing of a complaint under the *Directive on the Harassment Complaint Process* ([/pol/doc-eng.aspx?id=26040§ion=text](http://pol/doc-eng.aspx?id=26040§ion=text)), the person has an option to proceed with the filing of a written complaint and request that it be held in abeyance while continuing to pursue the informal process route. This will protect his or her right to later avail him or herself of the formal process, if needed.

If the issue cannot be resolved informally, or if the parties at any point opt out of the informal process and want to address the issue in a formal way, the complainant may within the applicable time limits:

- file a written complaint with the person responsible for managing complaints of harassment under the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?id=26040§ion=text>) (provided a grievance has not been filed on the same issue);
- file a grievance;
- file a complaint with the *Canadian Human Rights Commission* (<http://www.chrc-ccdp.ca/default-eng.aspx>) if an allegation of harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>);

The closure of the informal process is usually documented in writing by the Informal Conflict Resolution practitioner and constitutes a statement as to whether or not the process was successful in whole or in part, recognizing that any agreement between the parties will remain confidential. However, some information may be communicated to individuals in order to help implement the agreement. The agreement does not set a legal precedent and cannot be used in similar cases.

The responsible manager and the parties involved implement any agreed upon restorative and/or corrective measures in a timely manner.

Regardless of the outcome of the informal process, further action may be needed to ensure that positive and respectful working relationships are restored.

- For more information on restoring the wellbeing of the workplace, please refer to *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide* (</gui/rwfhc-eng.asp>).
- For more information on the informal resolution processes, please consult with your departmental Informal Conflict Resolution contact person. You may also refer to *Getting to know Informal Conflict Management Systems better* (</gui/conflplus-eng.asp>) and *A guide to the key elements of an ICMS in the core public administration* (</gui/conflgui-eng.asp>).

The Harassment Complaint Process: a Model for Applying the Steps

The procedural information provided in this section can be tailored to the distinctive operational needs and culture of each organization as long as the required steps under the *Directive on the Harassment Complaint Process* (</pol/doc-eng.aspx?>

[id=26040§ion=text](#)) and the principles of procedural fairness toward the complainant, the respondent and all parties involved are respected at all times. For more information on how to achieve procedural fairness within the context of a harassment complaint process, please consult your organization's Legal services or Labour relations advisors.

As per the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#), designated officials are responsible for ensuring that the harassment complaint process is carried out promptly and respects the principles of procedural fairness towards the complainant, the respondent and all other parties involved. Steps 1 to 4 in the formal process are to be completed without delay, within twelve months, and step 5 initiated within the same time frame.

Step 1 – Acknowledging receipt of the complaint

The complainant submits a harassment complaint in writing within one year of the last alleged incident to the designated official or any other person chosen by the organization with the required competencies to manage complaints of harassment. The complaint can be filed using a harassment complaint form or should at least include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a detailed description of the incident(s); and, if applicable, the names of witnesses. The onus is on the complainant to provide sufficient information, and be as precise and concise as possible.

Upon receipt of the complaint, the person responsible for managing the complaint process notifies the complainant in writing acknowledging receipt.

If the complaint is incomplete (following clarification) or has not been filed within twelve months of the last incident of the alleged harassment (unless there are extenuating circumstances), or if a grievance has already been filed on the same issue, then the complaint does not proceed further and the complainant is notified.

If a complaint is rejected, the alleged issues should still be addressed by exploring, with the parties and perhaps with the manager concerned, the nature of the issues, and by suggesting possible ways to resolve the situation.

Consideration

Twelve-month time limit

The twelve-month time limit to file a complaint is calculated from the date of occurrence of the **last repeated incident** or from the date of the **single severe incident**. Once the complainant can demonstrate that an incident occurred less than

twelve months prior to the filing of the complaint, the allegations can go back further in time to describe behaviours or events if they are directly related to the complaint. This is especially necessary in cases where the complainant intends to demonstrate a pattern of events. The investigation can look into these behaviours or events, subject to proper recollections by witnesses and parties involved, as well as availability of any documentary evidence.

Extenuating circumstances

Some consideration should also be given to extenuating circumstances where a complaint may otherwise have been deemed to be filed outside of the time limit. The person responsible for managing the complaint process will make a determination based on the extenuating circumstances to accept the complaint or not. Examples of extenuating circumstances may include:

- Illness
- Circumstances outside the control of the complainant (e.g. administrative delays or administrative error)
- Use of informal conflict resolution

Step 2 – Reviewing the complaint

Once the complaint has been acknowledged, the person responsible for managing the complaint process proceeds with the review of the complaint to determine whether or not the allegations satisfy the definition of harassment (see definition found in Annex A of the [Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](#) and examples provided in [Annex A](#) and [Annex B](#) of this document), and if necessary, seeks additional information from the complainant. The person responsible for managing the complaint process should be satisfied that the allegations and information provided, assuming they are true, satisfy the definition of harassment.

Complaints that do not meet the definition of harassment

If the person responsible for managing the complaint process determines that the allegations are frivolous or do not satisfy the definition of harassment, he or she informs the complainant that the complaint can not be accepted and provides the reasons for his decision.

In order to respect the principles of procedural fairness, the respondent is notified that a complaint was received, is provided with the allegations as they relate to him or her and the reasons why the complaint was not accepted. If the respondent requires a copy of the complaint, he or she has a right to obtain it.

If appropriate, the parties' managers can be made aware of the situation and are provided with the information on a need to know basis only. The person responsible for managing the complaint process may redirect the complainant to the appropriate avenue of recourse such as referring the person(s) to an Informal Conflict Resolution practitioner or suggest other means of resolving the issue. Many behaviours that do not meet the definition of harassment may still undermine wellness and excellence at work.

Consideration

Frivolous complaint

A frivolous complaint can be defined, according to the Shorter Oxford English Dictionary, as one "of little or no weight or importance" ... characterized by lack of seriousness;" or "manifestly futile". The frivolous complaint does not require an investigation to come to the evident conclusion that it is frivolous. The complaint should not proceed any further when, from a simple initial review, it is evident that it will not be possible to substantiate it because the complainant provided no specific allegations or information surrounding the allegations and, upon request, does not provide the necessary information to initiate a proper investigation of precise behaviours, acts, events or displays.

Vexatious complaint or one made in bad faith

A vexatious complaint, or one made in bad faith, is about intent and may only be determined through an investigation. This investigation would seek to determine if either the complaint was

- made intentionally for the purpose of vexing and annoying or embarrassing a person or
- the complaint was not calculated to lead to any practical result; or
- there is evidence of bad faith on the part of the complainant indicating an intention to mislead or if there is the presence of ill-will.

Complaints that meet the definition of harassment

If the complaint meets the definition of harassment, the person responsible for managing the complaint process informs the complainant in writing, that the complaint is deemed admissible. He or she also informs the respondent in writing that a complaint has been received. The respondent is provided with a copy of the allegations and is given an opportunity to respond to the allegations in writing. The parties' managers are made aware of the situation, if appropriate, and are provided with the information on a need to know basis so that they can support the parties, manage the impact on the team and keep operations running smoothly.

Consideration

Elements of the definition

For a complaint to be deemed admissible, the different elements of the definition should be present:

- The respondent displayed a potentially improper and offensive conduct;
- The behaviour was directed at the complainant;
- The complainant was offended or harmed;
- The respondent knew or reasonably ought to have known that his or her behaviour would cause offence or harm;
- The behaviour occurred in the workplace or at any location or any event related to work (as per the policy scope in the Application section of the [Policy on Harassment Prevention and Resolution \(/pol/doc-eng.aspx?id=26041\)](#)).

Repetitious behaviour versus single event

It is important to consider the severity and impropriety of the behaviour (act, comment or display) in the circumstances and context of each situation. Essentially, the definition of harassment means that more than one act or event need to be present in order to constitute harassment and that taken individually, this act or event need not constitute harassment. It is the repetition that generates the harassment. In other words, workplace harassment consists of repeated and persistent behaviours towards an individual to torment, undermine, frustrate or provoke a reaction from that person. It is a behaviour that with persistence, pressures, frightens, intimidates or incapacitates another person. Each behaviour, viewed individually, may seem inoffensive, however, it is the synergy and repetitive characteristic of the behaviours that produce harmful effects.

Please note that one single incident can constitute harassment when it is demonstrated that it is severe and has an important and lasting impact on the complainant.

Intention

In order to conclude that harassment occurred, the intent of the respondent to cause offence or harm by his/her acts, comments or displays does not need to be demonstrated; it is the impact on the other person that is taken into account. However, if this intent was present and can be demonstrated, it will be a factor in the determination of the corrective or disciplinary measures.

Reasonableness

To determine if a person ought to have reasonably known that the behaviour was improper, we must ask what a reasonable person, well informed of all the circumstances and finding himself or herself in the same situation as that of the complainant, would conclude. The behaviour in question is not only assessed by the impact or effect on the person, but it is also assessed against a reasonably objective standard. Did the behaviour exceed the reasonable and usual limits of interaction in the workplace? Would a reasonable person be offended or harmed by this conduct?

Sexual Harassment

In the case of alleged sexual harassment it is also important to note that a single incident may be viewed to be more significant in circumstances when the parties' relationship at work is one where the respondent has influence or power over the complainant with regard to career advancement, performance review, work assignment and when the incident(s) leads to adverse job related consequences for the complainant.

Please note that incidents of violence including alleged threats should be handled through the *Canada Occupational Health and Safety Regulations* – Part XX dealing with Violence Prevention in the Workplace found in the *Canada Labour Code*. Assaults, including sexual assault and criminal harassment are subject to the *Criminal Code* and such cases should be promptly referred to the appropriate authorities.

Step 3 – Exploring options

The person responsible for managing the complaint process determines what efforts have already been made to resolve the problem and identifies with the parties the various avenues of resolution available. If appropriate, the parties' manager may be involved in order to assist the parties in resolving the problem.

Informal resolution processes

If appropriate, the parties should be reminded of the options for informal resolution throughout the formal process. At any time, should the parties decide to resolve informally, the parties should be redirected to an Informal Conflict Resolution practitioner. If the process is successful in resolving the complaint, the person responsible for managing the complaint process ensures that any agreed upon restorative and or corrective measures are implemented. This constitutes the resolution of the complaint and the file should be closed. Further information on the informal resolution process is provided earlier in this guide.

Fact-finding

If the person responsible for managing the complaint process is satisfied that he or she has all the facts based on his or her inquiries and that the parties have been heard in accordance with the principles of procedural fairness, he or she may decide not to undertake an investigation, inform the parties accordingly of his or her reasons, and make a decision as to whether there was harassment, then proceeds to Step 5.

Investigation

If the person responsible for managing the complaint process decides to launch an investigation, he or she assigns a mandate to an investigator(s) (either sourced internally or through the Public Works and Government Services Canada Standing Offer Index (<http://soi.pwgsc.gc.ca/app/index.cfm?Fuseaction=prg.main&altlang=-e>)) and ensures that the person(s) conducting investigations are qualified in accordance with the Competencies Profile for Harassment Investigators ([/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp](http://pubs.pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp)), that they are impartial, have no supervisory relationship with the parties, and that they are not in a position of conflict of interest. Investigators must apply the principles of procedural fairness which include the individual's right to be heard, to be given a fair opportunity to present his or her case, to be given adequate time and sufficient detail to respond, and to be aware of the information held by the decision-maker prior to the decision being made (for more information on procedural fairness, please consult your organization's Legal services or Labour Relations advisors.)

The person responsible for managing the complaint process notifies the complainant and the respondent that an investigation has been launched, and informs them of their rights and responsibilities as well as possible options to access support and advice during any resolution process associated with the complaint.

If during the investigation process the parties undertake to informally resolve the complaint, the investigator will be asked to suspend the investigation pending further instructions. If the parties are successful in resolving the complaint, the investigation is terminated. If the informal resolution process is unsuccessful or if the person responsible for managing the complaint process concludes that progress is not being made in the resolution of the complaint after having spoken with the parties, the investigator is asked to resume his or her activities and the parties are notified of the intent to restart the investigation.

For more information related to the investigation process, please refer to the [Investigation Guide for the Policy on Harassment Prevention and Resolution \(lgui/hig-eng.asp\)](#).

Consideration

Being mindful of the parties' needs

Clear, timely communication with all involved parties is important throughout the process. The involved parties should be kept informed of developments.

During the resolution process, all parties should be treated fairly and objectively.

The complainant and respondent should also be asked what type of support and assistance they require throughout the process and be provided with options of appropriate resources.

Assessing the need to separate the parties

It is also important to consider the working relationship between the two parties. Occasionally, the complaint will be such that the two parties are able to continue working productively without changing their working relationship. This may be because they have minimal day-to-day interaction or there is not a direct reporting relationship. In other situations, however, the complaint process is a time of extreme tension that is very stressful on the working relationship of the involved parties. This, in turn, affects not only the productivity of the involved parties but also creates tension that pervades the entire work environment and reduces productivity of other employees as well. When this is likely to happen it may be necessary to separate the complainant and respondent in some way. The need to separate the parties should

be assessed carefully in consultation with the employees' manager(s). It may be sufficient to temporarily remove the reporting relationship. It may be appropriate to have the parties working from separate locations. Or it may require separating them, both hierarchically and physically. Any of these actions has consequences for the parties and for operations. Such hierarchical or physical separation should not be seen as a punitive or a disciplinary act against either party.

Step 4 – Rendering a decision

Following a fact-finding exercise or an investigation, the person responsible for managing the complaint process reviews all the relevant information and renders a decision. He or she then informs the parties in writing of his or her decision as to whether there was harassment and notifies their manager(s). A copy of the final investigation report, if applicable, is provided to both parties.

Other recourses

It is important to follow procedural fairness in the process and justify any decision made. This is especially important given that there are other recourse mechanisms available to employees.

The parties may grieve the decision or the manner in which the complaint was addressed or the disciplinary measures. This could result in a grievance going to arbitration by the Public Service Labour Relations Board.

The decision could also be challenged in Federal Court where the review would focus on whether or not the process respected the principles of procedural fairness.

If the harassment complaint relates to one of the grounds prohibited under the Canadian Human Rights Act (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>) the complainant has the right to file a complaint with the Human Rights Commission.

Step 5 - Restoring the well-being of the workplace

From the time a complaint is filed, the person responsible for managing the complaint process follows-up with the employees' manager to ensure that issues, concerns and needs of all parties involved are addressed throughout the complaint process as well as any detrimental impacts resulting from the incidences of harassment.

The harassment complaint process can be difficult and stressful for all parties involved and may have an impact on other colleagues. Regardless of the outcome of the formal process, further action may be needed by the responsible manager to ensure that anyone

who interferes with the resolution of a complaint with threats, intimidation or retaliation are addressed and that positive and respectful working relationships are restored in the work unit.

This may be accomplished with the input of all parties involved and may require the assistance of a specialist, and the support of union representatives to re-establish trust, improve communication and encourage positive working relations.

For more information on restoring the wellbeing of the workplace please refer to *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide* ([/gui/rwfhc-eng.asp](http://gui/rwfhc-eng.asp)).

Corrective or disciplinary measures

Where corrective or disciplinary measures may be required, the employee's manager receives a copy of the final investigation report, if applicable, and determines the measures in consultation with his or her labour relations advisor. Reasonable, timely corrective/disciplinary measures should be taken based on the conclusions of the investigation or the fact-finding, taking into account the values of the public sector, circumstances, legislation, precedents, policies and guidelines. The nature of the measures imposed such as the type and quantum of such measures (for example: a 10 day suspension) may be disclosed to the complainant(s) subject to the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>). Likewise, if the complaint is determined to have been vexatious or made in bad faith, the respondent may be informed of the nature of the corrective or disciplinary measures imposed, subject to the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>). For more information, please refer to the Information Notice 2007-15 - Release of Harassment Investigation Material.

The person responsible for managing the complaint process follows up to ensure that timely restorative, corrective and/or disciplinary measures are taken by the employee's manager, if warranted. Disciplinary measures may also be taken against any manager who is aware of a harassment situation and fails to take corrective action or anyone who interferes with the resolution of a complaint with threats, intimidation or retaliation.

Information management

Any documents related to the investigation are filed in a separate harassment complaint file. In other words, no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure. The harassment complaint file is kept for two years following the last administrative activity in relation to an individual case. These documents should be securely stored by the department.

Annex A — Examples of what may or may not constitute harassment

Remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

Inappropriate behaviour that is not harassment but still needs to be addressed

- Talking loudly in the workplace.
- Always being in a bad mood.
- Slamming doors.
- Constantly interrupting colleagues in a meeting.
- Barging in on colleagues who are having a conversation.
- Whining about trivial things.

What does not generally constitute harassment

- Carrying out managerial duties where the direction was carried out in a respectful and professional manner.
- Allocating work.
- Following-up on work absences.
- Requiring performance to job standards.
- Taking corrective or disciplinary measures when justified.
- A single or isolated incident such as an inappropriate remark or having an abrupt manner.
- Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
- A social relationship welcomed by both individuals.
- Friendly gestures among co-workers such as a pat on the back.
- The normal exercise of management rights.²
- Supervisory mistakes.
- Work-related stress.
- Conditions of works.
- Difficult professional constraints such as a budget reduction exercise.
- Conflicts.³
- Constructive criticism about the work mistake and not the person.
- Counselling an employee on his performance appraisal when done in a non discriminatory or respectful manner.

What may constitute harassment

- Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
- Exclusion from group activities or assignments without valid reason.
- Statements damaging to a person's reputation or career.
- Making sexually suggestive remarks or innuendos.
- Physical contact such as touching or pinching.
- Removing areas of responsibility unjustifiably.
- Inappropriately giving too little or too much work.
- Constantly overruling authority without just cause.
- Unjustifiably monitoring everything that is done.
- Blaming an individual constantly for errors without just cause.

What generally constitutes harassment

- Serious or repeated rude, degrading, or offensive remarks, such as teasing related to a person's physical characteristics or appearance, put-downs or insults.
- Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the *Canadian Human Rights Act*.
- Repeatedly singling out an employee by assigning him/her with demeaning and belittling jobs that are not part of his/her regular duties.
- Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours.
- Unwelcome social invitations, with sexual overtones or flirting, with a subordinate.
- Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
- Intimidation, threats, verbal abuse, blackmail, yelling or shouting.
- Caressing, kissing or fondling someone against his or her will (could be considered assault).
- Comments, repeated insinuations or false accusations to destroy a person's reputation.
- Insults or humiliations, repeated attempts to exclude or isolate a person.
- Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
- Persistently asking someone out, despite being turned down.
- Stalking an individual.
- Racist and discriminatory comments or offensive jokes.
- Inappropriate questions, suggestions or remarks about a person's sex life.

- Systematically interfering with normal work conditions, sabotaging places or instruments of work.
- Abuse of authority or power to threaten a person's job or undermine his or her performance.
- Bullying (physical, verbal, social, cyber).
- Falsely accusing and undermining a person behind closed doors, controlling a person's reputation by rumor-mongering, controlling the person by withholding resources (time, budget, autonomy, training) necessary to succeed.
- Humiliating a person in front of colleagues, engaging in smear campaigns.
- Arbitrarily taking disciplinary action against an employee.

Annex B — Scenarios with examples of what may or may not constitute harassment

Example 1

What does not constitute harassment

Bob is a supervisor. Dan, one of his staff consistently does not finish his tasks and leaves them for the person on the next shift. Bob has spoken to him twice in a courteous manner and has left him two notes. As Dan's performance does not improve, Bob meets him again to discuss work objectives, standards and deadlines.

What may constitute harassment

Bob meets with Dan a third time and becomes impatient with him by raising his voice during the meeting and by making accusatory statements such as 'you are incompetent'.

What is harassment

Bob speaks to Dan in a belittling and demeaning manner and calls him a slow, lazy and incompetent person. He has threatened to fire him on more than one occasion if he doesn't shape up and has warned him that there are lots of people waiting in line to take his place. In a fit of rage, Bob throws Dan's report in the garbage and laughs sarcastically at Dan.

Dan feels that Bob had been rude to him by making degrading and offensive comments and fears Bob's behaviour towards him. He feels his livelihood is also being threatened.

Example 2

What does not constitute harassment

The Workplace emergency response team are out on an exercise. Once completed, and after working hours, the team decides to go to the local pub. One of the team members, Louise, a new employee, and Mike exchanged differing views on a political topic.

What may constitute harassment

When it is time to leave, Mike, who had too much to drink, tells Louise, the designated driver, 'where to go' by using profane language. Louise is upset by the incident and approaches her union representative the following morning. Mike, Louise and the union representative meet, Mike acknowledges his inappropriate behaviour and offers an apology to Louise. Louise accepts the apology.

What is harassment

Mike returns to the workplace and speaks to his colleagues about Louise's reaction and refers to her as a 'cry-baby', a whiner and tries to convince them that she does not belong on the Emergency response team. He deliberately ignores her by not answering her questions and winks at his colleagues whenever she speaks in a meeting.

Louise had accepted Mike's apology and believed that the incident had been resolved informally. She now feels that this incident has 'crept' into the workplace and has a detrimental impact on her and on her relationships with Mike and her other colleagues.

Example 3

What does not constitute harassment

Albert, a term employee, has been waiting for two weeks to have his summer holidays approved. He has asked his manager Pierre twice and each time Pierre responded that he was busy and that he would get back to him as soon as he had some time.

What may constitute harassment

In the course of a conversation with a colleague, Albert learns that everyone else's leave has been approved for some time now. Albert also learns that everyone's term position has been extended as well except his. Albert recalls other occasions where he has had problems getting things approved, for example professional opportunities and family related leave.

What is harassment

Albert schedules more than one appointment with Pierre to discuss his concerns. Pierre cancels all appointments at the last minute without having valid reasons for doing so.

Albert feels isolated and singled out in his sector and believes Pierre is abusing his authority by withholding leave approval and blocking career opportunities for advancement.

1. Under certain circumstances, encouraging a person to voice his or her concerns with an alleged harasser may not be appropriate. This should be determined on a case by case basis.
2. Exercising the normal supervisory functions such as assigning and appraising work is not harassment, but how such functions are exercised can risk giving rise to the potential for harassment or perceptions of harassment.
3. Unresolved conflicts and build-up of stress inducers can be precursors to harassment.

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Directive on the Harassment Complaint Process

1 Effective date

1.1 This directive takes effect on October 1st, 2012.

1.2 It is issued in conjunction with the Treasury Board *Policy on Harassment Prevention and Resolution* ([/pol/doc-eng.aspx?id=26041](http://pol/doc-eng.aspx?id=26041)) dated October 1st, 2012 and both instruments replace the 2001 *Policy on the Prevention and Resolution of Harassment in the Workplace*.

2 Application

2.1 This directive applies to the core public administration which includes organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>) unless excluded by specific acts, regulations or orders in council.

2.2 The provisions in sections 6.2.2, 6.2.3 and 7 relating to the role of the Treasury Board of Canada Secretariat in monitoring compliance and directing measures to be taken in response to non-compliance do not apply with respect to the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this directive within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments providing principles and guidance on the management of compliance.

2.3 The harassment complaint process established under this directive is available to employees of organizations described in 2.1. For individuals who are not employees as defined in Appendix A, managers must address any allegation of harassment from these individuals in accordance with the spirit of this directive.

2.4 In circumstances where an employee files a harassment complaint against an individual who is not an employee as defined in Appendix A, managers must apply the complaint process as established in this directive to the extent possible.

3 Context

3.1 The prevention and resolution of harassment in the workplace is an essential component in the effective people management of an organization. The goal of Treasury Board as the employer is to maintain a productive, healthy and respectful workplace where positive working relationships and practices are promoted and where everyone is guided by the values of the public sector which includes treating each other with respect and fairness.

In keeping with the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041)*, the Treasury Board is committed to having a harassment-free workplace. In part, this can be achieved by ensuring that every organization remains sensitive to the potential for harassment, or perceptions of harassment in the workplace, and actively managing any such situations whenever and wherever they arise. Requiring organizations across the core public administration to implement measures for preventing and managing workplace harassment will help the employer reduce the effects of stressful work situations on employees, and improve their overall wellbeing and productivity, which in turn will lead to better results for Canadians.

3.2 Harassment is serious and needs to be addressed promptly, with sensitivity, competence and discretion. The primary goal is to resolve allegations of harassment in the most informal way feasible, with the least disruption possible for the parties involved and the work environment. While the seriousness of harassment allegations calls for access to a careful and rigorous process from the outset, it is consistent with such a process that many cases may, upon closer exploration and with the consent of all parties, be effectively dealt with through informal resolution processes.

3.3 This directive flows from the *Policy on Harassment Prevention and Resolution (/pol/doc-eng.aspx?id=26041)* and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of this directive.

3.4 Deputy heads have the responsibility and are accountable for the establishment and maintenance of a respectful and harassment-free workplace, and for the prompt resolution of related complaints. Treasury Board provides broad direction to deputy heads while the latter are responsible for implementation.

3.5 This directive is issued pursuant to section 7 and subsection 11.1 of the *Financial*

Administration Act (<http://laws-lois.justice.gc.ca/eng/acts/F-11/index.html>).

3.6 This directive is to be read in conjunction with the following:

- *Policy on Harassment Prevention and Resolution (</pol/doc-eng.aspx?id=26041>)*
- *Canada Labour Code (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>), including the *Canada Occupational Health and Safety Regulations (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>)* - Part XX dealing with Violence Prevention in the Workplace*
- *Canadian Human Rights Act (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>)*
- The principles listed in the *Policy Framework for People Management (</pol/doc-eng.aspx?id=19134>)*

In addition, the guidelines contained in the *Guide on Applying the Harassment Resolution Process (</gui/gahrp-gaprh-eng.asp>)* should be read in conjunction with this directive as they are fundamental in interpreting and applying efficiently the harassment complaint process.

4 Definitions

For definitions to be used in the interpretation of this directive, refer to Appendix A.

5 Directive Statement

5.1 Objective

The objective of this directive is to describe the minimum requirements of the harassment complaint process and set out expected results in order to ensure the timely and efficient resolution of complaints.

5.2 Expected results

The expected results of this directive are:

5.2.1 Complaints of harassment are handled fairly, confidentially¹, effectively and in a timely manner.

5.2.2 Steps are taken to restore the well-being of the workplace.

6 Requirements

6.1 The designated officials are responsible for the following:

6.1.1 Ensuring that the harassment complaint process is carried out promptly; respects the principles of procedural fairness towards the complainant, the respondent and all other parties involved; and that it contains the following five steps:

Step 1 - Acknowledging receipt of the complaint while ensuring that:

- employees understand that if a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this directive will not proceed further and the file will be closed.
- the written complaint is submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances); and
- the parties are made aware of the options for informal resolution from the outset and throughout the process.

Note: The *Canada Occupational Health and Safety Regulations* (<http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/index.html>) - Part XX dealing with Violence Prevention in the Workplace found in the *Canada Labour Code* (<http://laws-lois.justice.gc.ca/eng/acts/L-2/index.html>) should be considered in cases of incidents of violence including alleged threats. Assaults, including sexual assault and criminal harassment are subject to the *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>) and such cases should be promptly referred to the appropriate authorities.

Step 2 - Reviewing the complaint to determine whether the allegation(s) meets the definition of harassment as described in this directive (see [Appendix A](#)). The respondent is notified of the complaint whether or not the complaint is admissible.

Step 3 - Exploring options for resolving the complaint while ensuring that consideration is given to informal resolution processes. Should there be an investigation², the person conducting the investigation is appropriately qualified³ and applies the principles of procedural fairness.

Step 4 - Rendering a decision and notifying in writing the parties involved as to whether or not the allegations were founded.

Step 5 - Restoring the well-being of the workplace while ensuring that:

- the work unit manager in consultation with the Informal Conflict Resolution practitioners and other relevant organizational resources addresses the needs of the parties concerned and the work unit throughout the complaint process as well as any detrimental impacts resulting from the incidences of harassment; and
- the work unit manager takes timely corrective and/or disciplinary measures, if warranted, including addressing reprisal or risk of reprisal.

6.1.2 Ensuring that steps 1, 2, 3 and 4 are completed in a timely fashion, normally within 12 months unless there are extenuating circumstances, and step 5 is initiated within the same time frame.

For additional information on the application of the steps in the harassment complaint process, consult the *Guide on Applying the Harassment Resolution Process* ([/gui/gahrp-gaprh-eng.asp](http://gui/gahrp-gaprh-eng.asp)).

6.2 Monitoring and reporting requirements

6.2.1 Within Organizations

Consistent with the requirements in section 6.1, the deputy head is responsible for monitoring the performance of the organization with respect to the application and administration of this directive.

6.2.2 By Organizations

The Treasury Board of Canada Secretariat, Office of the Chief Human Resources Officer (TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer)) is responsible for assessing organizational performance with respect to the administration of and compliance with the requirements herein. The results organizations are expected to achieve may be assessed by data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework.

As deemed appropriate by TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer), the deputy head may be required to provide information considered necessary for assessing compliance with this directive. For example, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) may conduct focus groups with representatives of identified organizations, in partnership with the bargaining agents, to better understand challenges in organizations with relatively poor results.

6.2.3 Government Wide

TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) will review the directive and its effectiveness at the five-year mark of implementation.

7 Consequences

7.1 The deputy head is responsible for taking corrective measures when significant issues arise regarding compliance with this directive. When corrective action is not implemented satisfactorily or in a timely manner, the Chief Human Resources Officer may request that deputy heads temporarily withdraw or suspend delegated authorities to his/her staff, undertake corrective actions or impose measures to restore compliance with this directive.

7.2 For a range of consequences of non-compliance, refer to the *Framework for the Management of Compliance* ([/pol/doc-eng.aspx?id=17151](http://pol/doc-eng.aspx?id=17151)).

8 Roles and Responsibilities of Government Organizations

8.1 In addition to its monitoring role, TBS (Treasury Board of Canada Secretariat)/OCHRO (Office of the Chief Human Resources Officer) assists the designated officials with the implementation and application of this directive through the provision of advice and the issuance of related administrative guidelines and tools.

9 References

9.1 Other Relevant Legislation/Regulations:

- *Criminal Code* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>)
- *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html>)
- *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>)
- *Official Languages Act* (<http://laws-lois.justice.gc.ca/eng/acts/O-3.01/index.html>)
- *Public Service Labour Relations Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-33.3/index.html>)

9.2 Related policy instruments/publications

- [Values and Ethics Code for the Public Sector \(/pol/doc-eng.aspx?id=25049\)](/pol/doc-eng.aspx?id=25049)
- [Framework for the Management of Compliance \(/pol/doc-eng.aspx?id=17151\)](/pol/doc-eng.aspx?id=17151)
- [Policy on Official Languages for Human Resources Management \(/pol/doc-eng.aspx?id=12521\)](/pol/doc-eng.aspx?id=12521)
- [Policy on Language of Work \(/pol/doc-eng.aspx?id=12520\)](/pol/doc-eng.aspx?id=12520)

Guides/Tools:

- [Getting to know Informal Conflict Management Systems \(ICMS\) better \(/gui/confplus-eng.asp\)](/gui/confplus-eng.asp)
- [A guide to the key elements of an ICMS \(Informal Conflict Management System\) \(/gui/confgui-eng.asp\)](/gui/confgui-eng.asp)
- [Is it Harassment? A Tool to Guide Employees \(/gui/mibh-sjh-eng.asp\)](/gui/mibh-sjh-eng.asp)
- [Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)](/gui/gahrp-gaprh-eng.asp)
- [Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process \(/gui/hig02-eng.asp\)](/gui/hig02-eng.asp)
- [Preventing and Resolving Harassment in the Workplace: a Guide for managers \(/gui/hars-eng.asp\)](/gui/hars-eng.asp)
- [Restoring the Workplace Following a Harassment Complaint: A Manager's Guide \(/gui/rwfhc02-eng.asp\)](/gui/rwfhc02-eng.asp)
- [Sample of a Harassment Complaint Form \(/tbsf-fsct/hcf-fph-eng.asp\)](/tbsf-fsct/hcf-fph-eng.asp)

10 Enquiries

For interpretation of this directive, departmental officials should contact [TBS \(Treasury Board of Canada Secretariat\) Public Enquiries \(/tbs-sct/cmn/contact-eng.asp#enquiries\)](/tbs-sct/cmn/contact-eng.asp#enquiries). Employees should direct enquiries about this directive to their responsible departmental officials.

Appendix A - Definitions

Complaint (*plainte*)

is an allegation of harassment communicated verbally or submitted in writing. For the harassment complaint process, a written complaint must be submitted.

Designated Official (*responsable désigné*)

person designated by the deputy head to be responsible for the overall application of the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. The deputy head may designate more than one official in his organization.

Employee (*employé*)

for the purpose of this directive, employee refers to those employed as indeterminate employees, part-time employees, term employees, seasonal employees, casual workers, students and part-time workers in organizations defined in section 2.1.

Harassment (*harcèlement*)

improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Informal Resolution Process (*processus de résolution informel*)

a confidential, voluntary and collaborative problem-solving approach such as face to face conversation, conflict coaching, facilitated discussion or mediation that has the advantage of addressing the parties' needs, concerns and mutual interests. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System (ICMS) and alternative dispute resolution.

Restoration of the workplace (*rétablissement du milieu de travail*)

the establishment or re-establishment of harmonious working relationships amongst individuals and within the team, group or unit, following a harassment complaint.

Footnotes

¹ All parties directly involved in the process are expected to limit the discussion of all aspects of the complaint to those who need to know.

² An investigation may not be necessary if the designated official is satisfied that he has all the facts based on his inquiries and that the parties have been heard in accordance with procedural fairness.

³ Investigators must meet the Competency Profile for the harassment investigators (/pubs_pol/hrpubs/hw-hmt/cphi-pcemh-eng.asp).

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/ *Renewed Policy on Harassment Prevention and Resolution and the new Directive on the Harassment Complaint Process – Frequently Asked Questions*

Renewed Policy on Harassment Prevention and Resolution and the new Directive on the Harassment Complaint Process – Frequently Asked Questions

Questions

1. Why was a renewed policy issued and a new directive introduced?
2. How does the *Values and Ethics Code for the Public Sector* refer to harassment?
3. In the definition of harassment, the Policy refers to a “series of incidents”. What is meant by this? What is meant by “a reasonable person”?
4. The renewed policy refers to “designated officials”. What is the role of the designated official in the harassment complaint process?
5. What might appear to be harassment, but does not meet the definition?
6. Can the exercise of management’s authority constitute harassment?
7. How are harassment and violence in the workplace linked?
8. If I feel harassed, what should I do?
9. Does a harassment complaint have to be in writing?
10. What is meant by restoring the workplace following an allegation of harassment?
11. Does the complaint process described in the Directive apply to term employees and contractors?
12. Can members of the public file a complaint under the Policy if the complaint is against a public servant?
13. What happens to an allegation of harassment or a harassment complaint process when one of the parties in a harassment situation is no longer an employee?
14. Can an employee file a harassment complaint against his or her deputy head?
15. Can an employee of one department/organization submit an allegation of harassment against an employee employed in another department/organization? If yes, which department receives the written complaint?

16. Can a grievance related to harassment be lodged at the same time as a harassment complaint on the same issue?
17. Can a complaint under the *Canadian Human Rights Act* be lodged at the same time as a harassment complaint on the same issue?
18. What is the purpose of informal resolution processes? What type of informal resolution processes exist?
19. If a harassment complaint does not meet the definition of harassment and will not be pursued further, does the respondent still have the right to know that an allegation of harassment was made against him/her?
20. Can an anonymous complaint (in writing) be accepted?
21. Is the harassment complaint process kept confidential? What information might be disclosed under the *Access to Information Act* and *Privacy Act*?
22. What happens if an employee alleges harassment against another individual in the workplace for misconduct on social media (e.g. cyber-bullying, character defamation on Facebook; receiving offensive emails on personal accounts, etc.)?
23. An expected result of the Policy includes having "effective incentives for employees and managers to demonstrate a high level of respect for people..." What does this involve?
24. The Policy states that "those who are involved in managing and resolving harassment complaints must have certain required competencies, including informal conflict resolution skills." What are the required competencies or potential courses recommended in order to satisfy this requirement?
25. How will the Treasury Board monitor whether deputy heads are fulfilling their obligations under the Policy and Directive?
26. What are the consequences for deputy heads if their departments do not comply with the Policy?

Answers

Q1. Why was a renewed policy issued and a new directive introduced?

The Office of the Chief Human Resources Officer initiated a comprehensive review of all mandatory people management policy instruments in 2009.

The renewed *[Policy on Harassment Prevention and Resolution \(/pol/doc-eng.aspx?id=26041§ion=text\)](/pol/doc-eng.aspx?id=26041§ion=text)* and the new *[Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)](/pol/doc-eng.aspx?id=26040§ion=text)* reinforce the responsibility of deputy heads for establishing and maintaining a respectful and harassment-free workplace; for promptly resolving related complaints; and for monitoring compliance within their organizations.

The Policy provides deputy heads with strategic direction to foster a respectful workplace and address potential situations of harassment.

The Directive (for the use of functional specialists) describes the minimum requirements for the harassment complaint process in order to ensure the timely and efficient resolution of complaints.

Q2. How does the *Values and Ethics Code for the Public Sector* refer to harassment?

The *[Values and Ethics Code for the Public Sector \(/pol/doc-eng.aspx?section=text&id=25049\)](/pol/doc-eng.aspx?section=text&id=25049)* states that federal public servants are expected to conduct themselves in accordance with the values of the public sector and includes the following expected behaviours:

Respect for People

Public servants shall respect human dignity and the value of every person by:

- treating every person with respect and fairness;
- valuing diversity and the benefit of combining the unique qualities and strengths inherent in a diverse workforce;
- helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination;
- working together in a spirit of openness, honesty and transparency that encourages engagement, collaboration and respectful communication.

Q3. In the definition of harassment, the Policy refers to a "series of incidents". What is meant by this? What is meant by "a reasonable person"?

A "series of incidents" refers to more than one act or episode having occurred that, taken on its own, may not necessarily constitute harassment. It is the repetition that generates the harassment. While harassment is normally a series of incidents, one severe,

unrepeated incident that has a lasting impact on an individual may constitute harassment. Whether or not a single incident is considered harassment is determined on a case-by-case basis.

In cases of harassment, the standard that is used is that of "a reasonable person." The standard holds that each person has a duty to behave as a reasonable person would under the same or similar circumstances.

Q4. The renewed policy refers to "designated officials". What is the role of the designated official in the harassment complaint process?

The *Policy on Harassment Prevention and Resolution* requires deputy heads to designate an official or officials for the application of the Policy and the *Directive on the Harassment Complaint Process*. The Directive requires the establishment and maintenance of an effective harassment complaint process and sets out the specific roles and responsibilities of the designated official(s) pertaining to the application of the Directive.

In keeping with the intent of the Policy, which gives deputy heads the flexibility to tailor harassment prevention and resolution mechanisms, and practices to meet the needs of their organization, the deputy head may designate more than one official and further define their role as needed. It should be noted that the titles of the designated officials may also vary from organization to organization.

Q5. What might appear to be harassment, but does not meet the definition?

An isolated incident of improper conduct, such as an inappropriate remark, an act of "stupidity" or "foolishness," or a lack of good sense, is not intended to be captured by the term "harassment" as it is used in the Policy. Harassment is a serious term to be applied against an objective standard in circumstances where there is harm with a lasting impact on an individual and it can fairly be said "you should have known better."

In cases where a single incident is perceived as harassment, the person who made the remark or exhibited the behaviour may not be aware of the impact of their action, so the individual who feels harassed should try to communicate constructively the impact of the behaviour to that person. This will provide an opportunity for that person to rectify the unwanted behaviour and also serve to make it clear, if the behaviour reoccurs, that it is not acceptable.

Here are some examples of situations or behaviours that do not typically meet the

definition of harassment:

- Workplace conflict, in itself, does not constitute harassment but could turn into harassment if no steps are taken to resolve the conflict.
- Work-related stress in itself does not constitute harassment, but the accumulation of stress factors may increase the risk of harassment.
- Difficult conditions of employment, professional constraints, and organizational changes are all circumstances that can create stress and could lead to harassment if not managed properly.
- A social relationship welcomed by both individuals or friendly gestures among co-workers such as a pat on the back or a shared joke.

Q6. Can the exercise of management's authority constitute harassment?

The legitimate and proper exercise of management's authority or responsibility does not constitute harassment. Indicators of legitimate management authority are if the decisions are made in the interest of the organization, not in the interest of the manager, and if actions are within what a reasonable person would see as "good management." This applies in relation to the disciplinary process, the performance review process, giving directions for work, management of absenteeism, etc. However, these actions might constitute harassment if they are carried out in a manner that is offensive, humiliating or embarrassing, or when power and authority are used in a non-professional way, such as through threats, fear, ridicule or intimidation.

Q7. How are harassment and violence in the workplace linked?

Harassment is not normally of itself an act of violence, as most behaviours associated with harassment do not represent an imminent danger or cause harm in the form of injury or illness. However, harassment can be a risk factor for workplace violence in the same way that bullying, teasing and abusive and other aggressive behaviours can lead to acts of violence. Since harassment can be a precursor to violence, it is very important that the employer promptly and fully address all allegations of harassment.

Sexual and physical assaults are defined by the Criminal Code (<http://laws-lois.justice.gc.ca/eng/acts/C-46/>) and are dealt with according to that legislation. If you have been assaulted, you should seek assistance immediately by contacting your supervisor or security, and the police.

Q8. If I feel harassed, what should I do?

If you believe that you have been harassed, you are encouraged to make it known to the other person as soon as possible and in a respectful manner in an attempt to resolve the problem.

If the problem is not resolved or you cannot speak directly to the other person, you are encouraged to notify your supervisor or the manager at the next level.

To help you prepare for a meaningful conversation, you can also seek advice/support from:

- a departmental Informal Conflict Resolution practitioner;
- a departmental Human Resources Branch advisor/representative;
- a union representative;
- a departmental Harassment Prevention coordinator/advisor;
- the Employee Assistance Program; and
- other departmental resource persons (Elder, Ombudsman)

For more information, please refer to the following documents:

- [*Policy on Harassment Prevention and Resolution \(/pol/doc-eng.aspx?id=26041§ion=text\)*](#)
- [*Directive on the Harassment Complaint Process \(/pol/doc-eng.aspx?id=26040§ion=text\)*](#)
- [*Is it Harassment? A Tool to Guide Employees \(/gui/mibh-sjh-eng.asp\)*](#)
- [*Guide on Applying the Harassment Resolution Process \(/gui/gahrp-gaprh-eng.asp\)*](#)

Q9. Does a harassment complaint have to be in writing?

Whether communicated verbally or in writing, management should take any necessary steps to address allegations of harassment promptly in order to minimize the impact on the work environment and maintain the health of the workplace. However, as per the *Directive on the Harassment Complaint Process*, the complaint must be in writing to initiate the formal resolution process.

Q10. What is meant by restoring the workplace following an allegation of harassment?

The *Directive on the Harassment Complaint Process* sets out restoring the well-being of the workplace as one of the five steps in the harassment complaint process. It requires that the work unit manager in consultation with the Informal Conflict Resolution

practitioners and other relevant organizational resources address the needs of the parties concerned and the work unit throughout the complaint process, as well as any detrimental impacts resulting from the incidences of harassment.

A guide entitled *Restoring the Workplace Following a Harassment Complaint: A Manager's Guide* ([/gui/rwfhc-eng.asp](http://gui/rwfhc-eng.asp)) can be found on the Treasury Board Secretariat website.

Q11. Does the complaint process described in the Directive apply to term employees and contractors?

The harassment complaint process established under the Directive applies to those employed as indeterminate employees, part-time employees, term employees, seasonal employees, casual workers, students and part-time workers.

For individuals who fall outside of these categories of employees, such as contractors, members of the public (when they are dealing with a government employee), volunteers, or temporary workers hired through agencies, managers must address any allegation of harassment from these individuals in accordance with the spirit of the Directive.

Q12. Can members of the public file a complaint under the Policy if the complaint is against a public servant?

No, the *Directive on the Harassment Complaint Process*, which flows from the *Policy on Harassment Prevention and Resolution*, states that the harassment complaint process is available to employees in the core public administration. The term "Employees" for the purpose of the Directive refers to those employed as indeterminate employees, part-time employees, term employees, seasonal employees, casual workers, students and part-time workers.

For individuals who are not employees, including members of the public, managers must address any allegation of harassment from these individuals in accordance with the spirit of the Policy and Directive.

Q13. What happens to an allegation of harassment or a harassment complaint process when one of the parties in a harassment situation is no longer an employee?

The fact that a complainant or respondent leaves the Public Service does not diminish the deputy head's responsibility to ensure a workplace free of harassment by addressing the allegations of harassment in a timely manner and addressing any negative effects through restoration of the workplace.

Q14. Can an employee file a harassment complaint against his or her deputy head?

Deputy heads are not covered by the *Directive on the Harassment Complaint Process*, which flows from the *Policy on Harassment Prevention and Resolution*. Deputy heads are subject to the *Values and Ethics Code for the Public Sector*, which states that federal public servants *shall respect human dignity and the value of every person by:*

- treating every person with respect and fairness; and
- helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination.

The employee should make the situation known to his/her manager or the person responsible for managing the harassment complaint process. The person who receives the complaint must then apply the harassment complaint process as established in the Directive to the extent possible.

Q15. Can an employee of one department/organization submit an allegation of harassment against an employee employed in another department/organization? If yes, which department receives the written complaint?

Yes, because the scope of the *Policy on Harassment Prevention and Resolution* applies to employees in the core public administration as described in the application section of the Policy and *Directive on the Harassment Complaint Process*. Preferably, the written complaint should be sent to the person responsible for the harassment complaint process in the department/organization where the alleged incident of harassment occurred. Representatives from the two departments/organizations may need to collaborate to discuss the best approach to deal with the complaint.

Q16. Can a grievance related to harassment be lodged at the same time as a harassment complaint on the same issue?

As per the *Directive on the Harassment Complaint Process*, a complaint of harassment cannot be filed if a grievance has already been filed or been dealt with on the same issue.

However, an employee may file a grievance **following** the filing of a complaint of harassment, provided it is within the prescribed time limit in the collective agreement. If an employee chooses to file both a harassment complaint and a grievance, he or she may be requested to choose one process over the other so that both avenues of resolution are not

pursued at the same time. With the mutual agreement of the employer, employees may request that the grievance be put in abeyance while pursuing the harassment complaint process.

Q17. Can a complaint under the *Canadian Human Rights Act* be lodged at the same time as a harassment complaint on the same issue?

If an allegation of harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act* (<http://laws-lois.justice.gc.ca/eng/acts/h-6/>), then an employee has the right to file a complaint directly with the *Canadian Human Rights Commission* (<http://www.chrc-ccdp.gc.ca/eng/content/i-want-complain>). However, if an employee also lodged a harassment complaint within their organization, the Canadian Human Rights Commission will often insist that all avenues be exhausted within that organization before they proceed with the complaint submitted to them.

Q18. What is the purpose of informal resolution processes? What type of informal resolution processes exist?

Informal processes, such as dialogue, facilitation or mediation, offer the possibility of resolving in a satisfactory manner, and acceptable to both parties, many work issues related to harassment. Such an approach has the advantage of addressing the parties' needs, concerns and other interests. It empowers the parties to find solutions that meet their mutual needs and often lead to the re-establishment of respectful working relationships.

Q19. If a harassment complaint does not meet the definition of harassment and will not be pursued further, does the respondent still have the right to know that an allegation of harassment was made against him/her?

Yes. Procedural fairness requires that a person be promptly made aware of allegations made against that person, even if the allegations are not substantive enough to be admissible as a harassment complaint for further review. This information would also be accessible to the respondent under the *Privacy Act* (<http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>).

Q20. Can an anonymous complaint (in writing) be accepted?

In order for a written complaint to be accepted under the *Policy on Harassment Prevention and Resolution* and in line with the *Directive on the Harassment Complaint Process*, the complainant must be identified along with other basic requirements. However, a manager who receives an anonymous complaint still has a responsibility to follow up to the extent possible in order to address the issue raised, resolve any conflicts and ensure a harassment-free workplace.

Q21. Is the harassment complaint process kept confidential? What information might be disclosed under the *Access to Information Act* and *Privacy Act*?

To protect the integrity of the harassment complaint process and investigation, every effort should be made to keep the process confidential by providing information to individuals on a need-to-know basis only and by compelling witnesses to maintain confidentiality.

For information on what is subject to disclosure under the *Access to Information Act* (<http://laws-lois.justice.gc.ca/eng/acts/A-1/>) and the *Privacy Act*, please consult the Treasury Board Secretariat Web page on *Access to Information and Privacy* ([/atip-aiprp/index-eng.asp](http://atip-aiprp/index-eng.asp)).

Q22. What happens if an employee alleges harassment against another individual in the workplace for misconduct on social media (e.g. cyber-bullying, character defamation on Facebook; receiving offensive emails on personal accounts, etc.)?

Employee obligations and expected behaviors as outlined in the *Values and Ethics Code for the Public Sector* apply when using email and Web 2.0 tools in the workplace, be it for professional or personal ends. The Code is clear that public sector employees must respect the human dignity and value of every person.

In order to decide whether an individual's conduct on social media constitutes a breach of the *Policy on Harassment Prevention and Resolution*, one of the criteria is whether the behaviour occurred in the workplace or at any location or any event related to work.

Each allegation of harassment is managed on a case-by-case basis, and the facts of the case are established to determine when and where the incidents took place.

It may be necessary for the employee to contact the police if the activity is occurring outside the workplace or at an event not related to work and outside the hours of work.

In keeping with the intent of the Policy, management should be aware of any consequences spilling over into the workplace, and address and resolve any potential situations of harassment in a timely and efficient manner.

If an employee has questions about their online activity, they should speak to their manager or a Values and Ethics advisor.

Q23. An expected result of the Policy includes having "effective incentives for employees and managers to demonstrate a high level of respect for people..." What does this involve?

"Effective incentives" are tools or mechanisms put in place that can over time lead to improvements in the perceived climate of respect in the workplace. In addition to traditional harassment prevention approaches, such as learning and awareness programs, one example of an "effective incentive" could be introducing regular feedback to each employee on his or her people skills and behaviours in the workplace. This feedback could be linked to his or her overall performance appraisal and personal development plans.

The new policy instruments require that organizations review the tools and mechanisms that they have in place, and consider how they are influencing the workplace climate and employee perceptions of respect.

Q24. The Policy states that "those who are involved in managing and resolving harassment complaints must have certain required competencies, including informal conflict resolution skills." What are the required competencies or potential courses recommended in order to satisfy this requirement?

Under the Policy, deputy heads have the flexibility to determine which "required competencies," training and specific courses are required to manage the resolution of harassment complaints in their organization. The idea is to ensure that those involved from the outset in helping the parties resolve issues related to harassment have the required competencies to help resolve these situations as quickly as possible, in a fair, constructive and respectful manner.

In order to achieve this aim, organizational representatives should be able to guide the parties through the steps of the formal resolution process and should also have minimal conflict resolution skills to help the parties express their needs, concerns and other

interests that are otherwise not often openly expressed. Active listening skills, listening with empathy and collaborative problem solving skills, which are often taught in mediation courses, are useful in helping the parties move from their position of "who is right and who is wrong" to "what can we do to work together better..."

Q25. How will the Treasury Board monitor whether deputy heads are fulfilling their obligations under the Policy and Directive?

The Treasury Board Secretariat's Office of the Chief Human Resources Officer has developed an approach with departmental representatives and bargaining agents to measure results with respect to the obligations of each organization in preventing and resolving harassment.

Organizations are required to develop and implement their own strategy for a respectful workplace, which they will monitor and use to report their progress.

The Treasury Board Secretariat's Office of the Chief Human Resources Officer will require organizations to report on their progress via the Management Accountability Framework.

The Treasury Board Secretariat will also review the Policy and its effectiveness at the five-year mark of implementation.

Q26. What are the consequences for deputy heads if their departments do not comply with the Policy?

Consequences of non-compliance with the Policy or failure to take corrective actions requested by the Chief Human Resources Officer may result in Treasury Board taking actions under the *Financial Administration Act*.

For a range of consequences of non-compliance, please refer to the [Framework for the Management of Compliance \(/pol/doc-eng.aspx?id=17151\)](/pol/doc-eng.aspx?id=17151).

Date modified:

2013-07-30

Type 1

Recommendation

Documents where there are no identified concerns with their release.



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

FOR MANAGING THE RETURN TO WORK



How to reach the Canadian Human Rights Commission

If you need more information or would like to order other publications, please contact:

Commission regional offices in Halifax, Montreal, Toronto, Edmonton and Vancouver,
toll free 1-800-999-6899 (addresses available on the Commission's website);

or

National office at 344 Slater Street, 8th floor, Ottawa, Ontario K1A 1E1
Telephone: (613) 995-1151, or toll free 1-888-214-1090
TTY: 1-888-643-3304.

E-mail: info.com@chrc-ccdp.ca
Web site: www.chrc-ccdp.ca

This document is available on the Canadian Human Rights
Commission's website and on request in alternative formats.

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Introduction

Absences due to disability or illness are among the most challenging human resource situations facing employers today. Indeed statistics show that costs generated by disability and income programs are steadily rising as are productivity losses. The National Institute of Disability Management and Research estimates that at any given time, 8 to 12% of Canada's workforce is absent due to illness or injury.

Several factors are contributing to Canada's growing rates of prolonged employee absenteeism, including stress related to technological change and organizational restructuring, an aging workforce that is more susceptible to long-term illness, and difficulties balancing work and family responsibilities.

The Canadian Human Rights Commission (CHRC) receives many complaints based on disputes regarding the transition back to work after a prolonged employee absence. The Commission is committed to helping employers manage these cases so that the employee can return to work safely, quickly and efficiently. That's why it has developed this booklet of guidelines to support managers and supervisors in handling return-to-work situations.

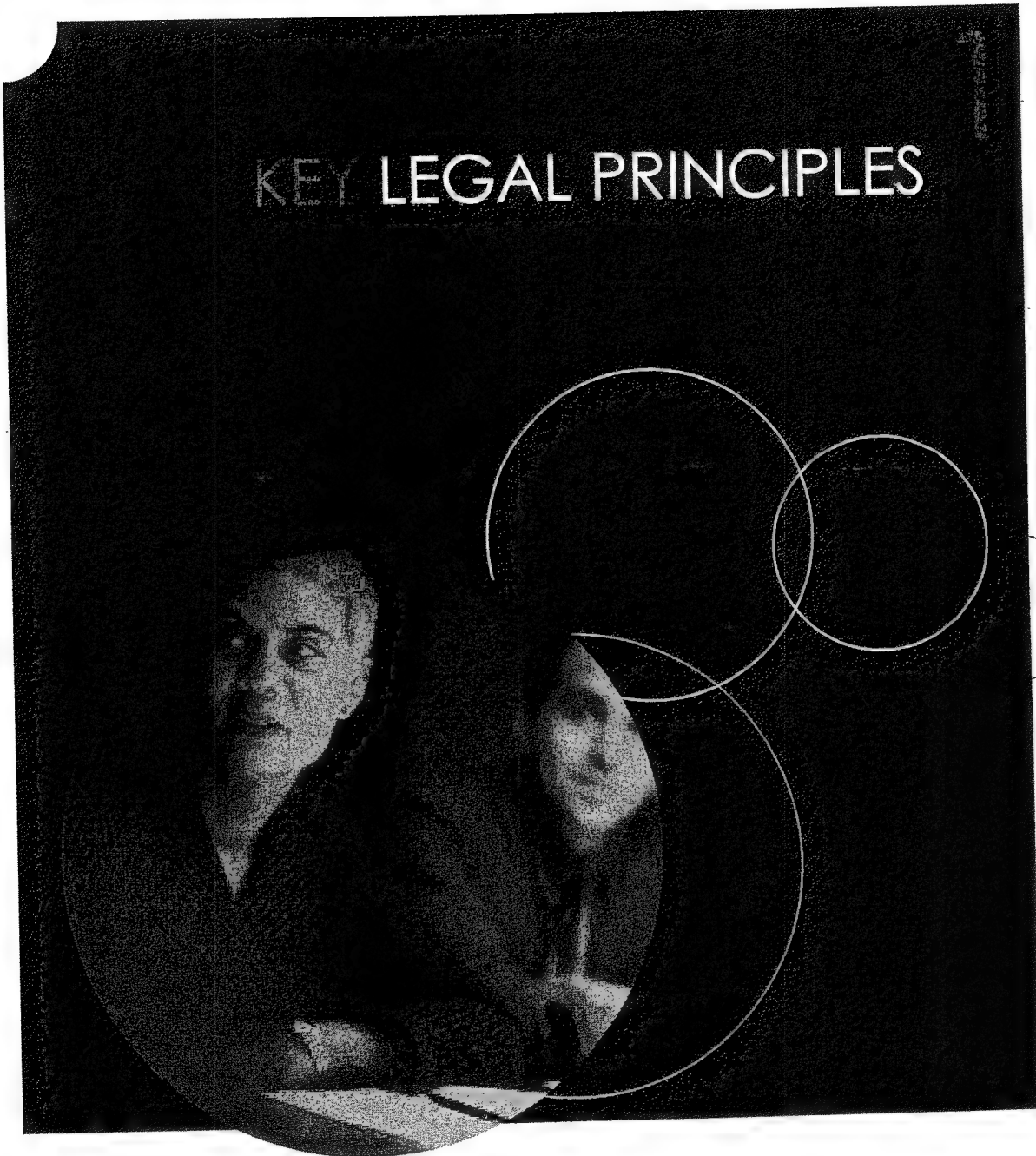
Inside you will find:

- an outline of the key legal principles that apply to return-to-work situations;
- step-by-step procedures to guide your approach to case management;
- a series of case studies demonstrating how you could deal with different hypothetical scenarios.

While these guidelines will assist you in dealing with return-to-work situations, they are **NOT** to be taken as legal advice for individual cases, as each case has unique circumstances. You should consult with senior managers, legal advisors, or others in your organization for advice on resolving complex return-to-work cases.

For more information, you are encouraged to refer to the additional resources listed at the end of this booklet. These resources are available online.

KEY LEGAL PRINCIPLES





The *Canadian Human Rights Act* (CHRA) has established several key principles that protect the rights of employees and employers and help create workplaces that are productive and respectful. In this section, we provide a brief overview of the principles that are relevant to managing an employee's return to work. By taking a proactive approach, employers can resolve unclear situations where employees need accommodation and reduce the number of complaints that are filed.



1. Protection from Discrimination

According to the CHRA, "all individuals should have an equal opportunity to make for themselves the lives that they are able and wish to have." It also states that individuals should have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered by discrimination based on the factors or "prohibited grounds" listed below.

- Race
- Colour
- Religion
- Sex
- Marital status
- Disability
- National or ethnic origin
- Age
- Sexual orientation
- Family status
- Criminal conviction for which a pardon has been granted

Protection against discrimination is particularly important in cases where an employee has been away and is planning a return to work. Research has shown that many of the complaints filed with the CHRC arise from these situations. In return-to-work cases, disability is the ground most likely to be at issue. Discrimination following absences due to pregnancy and maternity leave may also be grounds for complaint.

What is workplace discrimination?

Workplace discrimination means putting an employee at a disadvantage based on prohibited grounds. Discrimination results in barriers to workplace equity because it blocks access to equal opportunities. Discrimination may happen intentionally or inadvertently—workplaces often have policies that apply to everyone, but some employees may not be able to meet certain expectations for reasons concerning a disability or other prohibited ground.



As the CHRA explains, employers need to examine how their workplace rules might affect employee rights, and then take action to prevent discrimination.

2. The Duty to Accommodate

The "duty to accommodate" is a legal principle that requires employers to identify and change any rules, practices, expectations, or procedures that have or may have a discriminatory impact based on the CHRA's prohibited grounds.

An employer also has a duty to accommodate the specific needs of employees so that they can perform to the best of their potential. However, the duty to accommodate is not unlimited. An employee's right to equality must be balanced with an employer's right to run a productive workplace.

Generally, employers should look at situations involving the duty to accommodate on a case-by-case basis, since each will have unique circumstances. By incorporating good communication practices, employers can make sure that staff members have what they need to do their work to the best of their ability.

There are, however, certain circumstances under which an employer is not required to provide accommodation, as in cases of undue hardship.

What is undue hardship?

The term "undue hardship" refers to the limit of an employer's capacity to accommodate without experiencing an unreasonable amount of difficulty. Employers are obligated to provide accommodation "up to the point of undue hardship." This means an employer is not expected to provide accommodation if doing so would bring about unreasonable difficulties based on health, safety, and/or financial considerations.

There is no precise legal definition of undue hardship, nor is there a standard formula for determining undue hardship. Each situation is unique and should be evaluated individually. Undue hardship usually occurs when an employer cannot sustain the economic or efficiency costs of the accommodation.

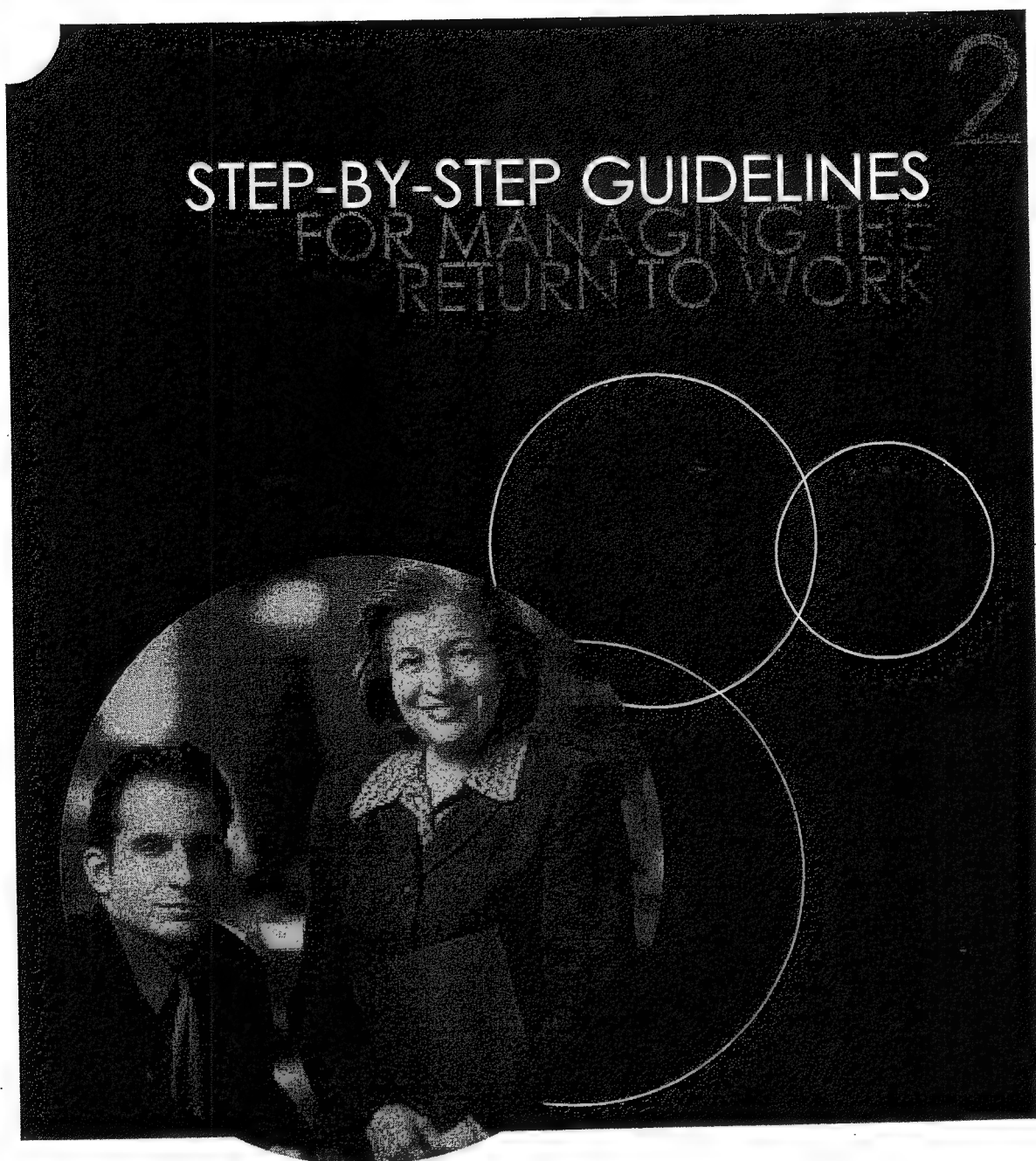
Generally, some hardship can be expected in meeting the duty to accommodate. Employers are required to carefully review all options before they decide that accommodation would cause undue hardship. It is not enough to claim undue hardship based on an assumption or an opinion. To prove undue hardship, employers have to provide evidence.



3. Privacy Rights

The right to privacy is another legal principle to keep in mind when organizing for an employee's absence and return to work. While in certain cases employees are required to give details on a medical condition, there are limits on what employers should request and what employees have to reveal. Medical information should only be shared, within the workplace, on a need-to-know basis and must be kept confidential.

In addition, there are restrictions on when an employer can ask an employee to take a medical exam. Please refer to Part 2 of this booklet for more information on this.





Managing a return-to-work case is often a complex responsibility. Return-to-work cases present challenges because they involve the careful balancing of an employer's right to manage a productive workplace with a worker's fundamental right to equality, dignity, and privacy. Employers—and those representing employers, such as directors, supervisors, or human resources officials—may be unsure of how best to approach a return-to-work case, particularly when the employee requests difficult or unexpected accommodation measures.

This section contains general guidelines to support you in approaching a return-to-work case. These guidelines clarify what you are entitled to as an employer, what your legal obligations are, and what you can expect from employees, unions, and other stakeholders during the return-to-work process.

These guidelines are NOT intended to replace your organization's internal policies regarding return-to-work/accommodation case management (if your organization has such policies in place, as is recommended). Instead, they are meant to show that an open communication process facilitates efficient case management and ensures a better outcome for all parties. Consult your organization's human resources department if you require information on any internal policies that may be in effect.

The step-by-step procedures presented below describe the general phases that apply to most return-to-work situations. Use these procedures to help guide your approach and decisions, but also keep in mind that you should evaluate each case individually, as each presents unique circumstances.



Step #1: Gather details and assess the situation

- **Maintain contact with the employee during a prolonged absence**

In most cases, but not all, it is a good practice to maintain occasional contact with an employee during their absence. By getting in touch with the employee once in awhile, you can find out how they are doing and, in some situations, find out approximately when they might be able to return to work. This will give you time to make arrangements in advance. However, you should not contact the employee so frequently that they feel pressure to return to work before they are able.

- **Respond when the employee tells you they are ready to return to work**

The first step in managing a return-to-work case begins when an employee contacts you to tell you when they will be ready to resume work. They may contact you by phone, email, fax, or letter, or they may speak with you in person.

In certain cases, you may already have scheduled a date for the employee to return to work. If the employee doesn't get in touch with you by the agreed-upon date, you should try to reach them to get an update on their condition. In other situations, you may have

no clear idea when the employee will be ready to resume work, as is often the case with absences due to illness or injury.

If the employee requests accommodation measures that raise questions or concerns, you should immediately tell them that you'd like to discuss their request further. You should emphasize that you are concerned about the employee's health and need to better understand the situation in order to make a decision and find appropriate solutions.

Supervisors are entitled to ask for additional time to assess an accommodation request if the employee doesn't provide enough notice prior to their expected return to work. For their part, employees have a responsibility to give their supervisors enough time to prepare for their return to work, particularly if they are requesting accommodation for specific needs.

If you need extra time to consider an accommodation request, you should ask the employee if they are able to return to their job (without measures for accommodation) until a decision is made. If the employee is unable to do this, you should arrange for temporary accommodation measures. If that is not possible, the employee will have to remain on leave. If you advise the employee to stay on leave, you should have records on hand



to demonstrate that you researched various options for temporary accommodation.

- **Create a case file**

Be sure to create a case file for each return-to-work situation you manage. Take detailed notes during all conversations and meetings regarding the situation. Keep copies of these notes in the case file.

A case file is critically important for several reasons:

- The file will become an important resource for reviewing case details.
- With these records, you can easily track the progress of each case.
- A case file will provide you with a record of all correspondence with employees, health specialists, and other stakeholders, should any misunderstandings arise.
- A detailed case file helps to document and demonstrate your efforts to meet your duty to accommodate, should a case be appealed.

- **Review any medical information submitted by the employee**

During the initial stages of managing a return-to-work case, you should review any health or medical information that has been submitted

by the employee, such as a doctor's note or certificate. Before returning an employee to work, you need to be certain that you have enough information about their capabilities and limitations related to the job duties.

As a supervisor, you have a responsibility to protect the health and safety of employees while they are at work. Therefore, you are entitled to gather certain health and medical information about an employee as they are preparing to return to work.

You are entitled to find out how the employee's medical condition will affect their ability to complete job duties. Note that you are NOT necessarily permitted to obtain a diagnosis of a condition, only details of how the condition may have an impact on the job. For example, you might be advised that an employee needs to attend weekly medical appointments and is taking medication that would prevent them from operating heavy machinery, but you would not be told the exact diagnosis or cause of the condition (such as depression). Please refer to Step #2 for more details on what medical information you are entitled to obtain.



Tip

Be open-minded

There are many ways to approach a return-to-work situation. Research shows that the more options you are at least willing to consider and discuss, the more cooperation you'll receive from the employee, their colleagues, and other stakeholders, such as union representatives.

For their part, the employee is obligated to provide documents that clarify health restrictions and describe the type of accommodation that would be most effective to facilitate their return to work.

- **Meet with the employee**

In complex cases, you should ask the employee to attend a meeting as soon as possible to verify details of their expected return to work and any associated accommodation requests. In straightforward situations, a discussion over the telephone will suffice. Note that the employee has a legal obligation to actively participate in the accommodation process.

During the meeting or telephone conversation, take detailed notes so that you will better understand and recall the discussion. Add a copy of these notes to the case file.

When speaking with the employee, you should attempt to clarify anything that is unclear in medical information provided by the employee.

Another important point to establish during this meeting is whether or not the employee would like a union official to represent them during the return to work/accommodation process (see Step #3 on page 15 for more information on this).

- **Request employee's consent to obtain further medical or health information (if necessary)**

As a supervisor, you have a duty to make informed decisions on accommodation. In order to do this, you need to gather adequate information about the employee's situation, and abide by privacy and human rights laws while doing so.

If you feel you don't know enough about the employee's situation, you need their consent to retrieve additional information. If the employee refuses to cooperate, explain to them that you cannot properly assess their needs and cannot proceed with the accommodation process until you get this information.



It's important to ensure that the employee knows that this information will only be used to determine appropriate accommodation measures. You should also explain that the organization has standard procedures to make certain that the employee's medical information is kept confidential and shared only on a need-to-know basis. Contact your organization's human resources department if you need more details about these procedures, so that you can describe them to the employee.

Step #2: If necessary, consult with health and medical specialists

In general, supervisors are entitled to receive the following medical information:

- *Information about the employee's current medical condition*
You are entitled to find out how the employee's medical condition will affect their ability to complete job duties.
- *Prognosis for recovery (if available)*
You are entitled to know if the condition is temporary or permanent (if the medical professional has this information; sometimes a prognosis cannot be established). If it is a temporary condition, you are permitted to find out how long accommodation might be required.

- Information on the employee's capabilities for alternative employment

If it is determined that the employee is not capable of performing their normal or modified job duties, alternative positions must be considered. You are entitled to know the employee's capacity to perform alternative work.

Tip

Provide detailed information

When consulting with doctors and other health specialists, such as occupational therapists, it's vital to provide as much detailed information as possible about an employee's job duties and the workplace setting. Describe the work environment so that the specialist understands how and where the employee works and what equipment is used for the job.



- **If medical information provided is inadequate, obtain expert advice**

If—after meeting with the employee and reviewing any medical document they have submitted—you feel you cannot make an informed decision on how to accommodate an employee, you may take steps to learn more about the employee's health status.

- *Request clarification from the employee's doctor or health specialist*

As a first step in clarifying health information, you need the employee's consent to make further inquiries with the employee's own physician. If after that you are still unclear, you can then seek additional information from an outside specialist.

- *Request that the employee undergo an independent medical assessment*

A medical exam by an independent assessor is allowable only in a few specific circumstances. Generally, medical exams are permitted in cases where an employee is returning to work after a serious illness or accident.

You may request an exam if you have reason to believe that an employee is not fit to do their job, and that a return to work might endanger their health or the well-being of others. In this circumstance, you must

prepare a clear explanation of why you feel the employee's return to work presents a real, immediate, and significant risk to the employee's health. Be sure to document these reasons in the case file. It is NOT acceptable to request a medical exam simply out of worry that the employee's medical condition may come back or get worse.

Step #3: Consult with union representatives (when necessary)

- **Determine if it is necessary to consult with the union**

A union representative can provide you with valuable advice as you explore various options to accommodate an employee who will be returning to work.

You are required to include the union in return-to-work/accommodation discussions when:

- Your proposed accommodation measures will affect the rights (e.g. seniority rights) of other employees under collective bargaining agreements; and/or
- The employee tells you they want their union representative present during discussions regarding accommodation options.



Tip

Stay positive

In communications with all stakeholders, stay positive and upbeat as much as possible. If you show that you're committed to working through the accommodation process, you'll develop a rapport with stakeholders and earn their trust. This can help to get the situation resolved and get the employee returned to work more quickly.

- **Arrange to speak with a union representative**

Once you have assessed the situation and determined that the union should be involved, arrange to speak with a union representative, either in person or over the phone. Review the case details with the union official, while taking care to respect the confidentiality of any personal information collected from the employee. Remember that personal information must only be shared on a need-to-know basis. Be sure to take notes and keep a copy in the case file.

Unions have a responsibility to cooperate with supervisors to find accommodation solutions for employees returning to work.

The courts have made it clear that unions are required to support accommodation measures regardless of what has been specified in collective agreements. In other words, unions cannot block a viable accommodation option, such as a transfer to another position, because it may violate the terms of a collective agreement; in fact a union can be held liable if it hinders such efforts to accommodate.

However, collective agreement provisions are to be respected. Supervisors are obligated first to explore the accommodation options that will not interfere with rights and entitlements provided under collective agreements.

Step #4: Review the accommodation options with the employee and other stakeholders

- **Decide on your accommodation options**

As a supervisor, it is your responsibility to ensure that all accommodation options have been explored, and that the option chosen is consistent with medical information obtained and best meets the needs of the employee, the employer, and other stakeholders. In situations where co-workers will be affected, you are obligated to select an option that is least likely to interfere with seniority and collective agreement rights.



Remember that you are not required to implement a perfect solution for the employee, or one that they specifically demand. However, the employee is entitled to a solution that meets their medically verified needs. Keep an open mind when considering the various approaches to accommodate the employee. If there isn't one obvious solution, look at the possibility of using a combination of options.

If you determine that accommodating an employee would result in undue hardship to the employer, you may choose to decline the request. Keep notes in your case file as to why you have rejected the request. You may need to explain your reasoning if the employee chooses to appeal the decision through a higher level in your organization, or if the case is referred to the Canadian Human Rights Commission.

If you are considering declining an accommodation request, you are encouraged to discuss the matter with advisors from your organization's human resources department. Please refer to section on "undue hardship" on page 7 for more information on your legal right to refuse accommodation requests.

- **Discuss your recommendations with the employee**

After you have consulted with stakeholders and collected the necessary information, you should prepare to present the employee

with one or more of your recommended options to accommodate their return to work. It may also be beneficial to include other stakeholders, such as a representative from your organization's human resources department or union officials, in this discussion.

Schedule a time to review your recommended option(s) with the employee and other stakeholders (if necessary). During this meeting, you'll have the opportunity to answer any questions and clarify any points that may be misunderstood. This also gives the employee a chance to respond to your proposed solutions and provide any feedback to help finalize them.

If the employee refuses your proposed accommodation measures, you may decide to explore other options or, as a last resort, deny their request (if you feel you have met your duty by offering them a reasonable accommodation option). Be sure to take notes describing the employee's reasons for refusing the accommodation. It is recommended that you contact your organization's human resources department or other designated officials for further guidance before halting the accommodation process.



Step #5: Implement accommodation measures

Having reviewed your recommendations with employees and stakeholders, and made a decision, you are ready to move ahead with implementation. You should work as quickly as possible to implement the accommodation measures you have selected. The employee can get back to work without delay, and you will demonstrate that you are committed to an effective return-to-work process. This contributes to building an organizational culture of trust and respect—values that boost the overall productivity of the workplace.

- **Monitor the effectiveness of the accommodation**

Once the employee has returned to work, you should periodically evaluate the effectiveness of the accommodation measures. Speak with the employee to find out if they are able to work productively, and if any of the accommodation measures need adjustment. When applicable, verify that the employee's co-workers are comfortable and able to manage any reassigned or additional job duties. If you need assistance with reassigning duties among co-workers, seek guidance from your organization's human resources department or other designated officials.

- **Advise the employee of the appeals and complaints process (if necessary)**

If you feel that you have done everything reasonably possible to meet your duty to accommodate, and the employee remains dissatisfied, tell them they have the option to appeal the decision at a higher level in the organization. Give them information on how to begin this process, according to your organization's internal policy. You should also advise the employee that they can take their concerns to the Canadian Human Rights Commission.



Roles and Responsibilities in the Return-to-Work Process

Employers (including employer representatives, such as directors, supervisors, and human resources officials), employees, and unions share in the responsibility to find solutions for managing the return to work. Below are lists summarizing the main roles and responsibilities that each party has in the process.

Employer/Supervisor's Responsibilities

1. Ensure employees are aware of their right to accommodation, explain details about the workplace accommodation policy, and distribute copies of the policy.
2. Once a request is received, discuss the accommodation options with the employee.
3. Take notes and keep records of all discussions about accommodation.
4. Take an active role in exploring alternative approaches and solutions to accommodate the employee.
5. Obtain expert opinion and advice from a designated human resources or health specialist when necessary.

6. Keep information/medical records confidential.
7. Grant accommodation requests in a timely, reasonable manner, to the point of undue hardship (see page 7 for information about undue hardship).
8. Be willing to review and modify the accommodation agreement if the circumstances change or the solution is no longer working.
9. Provide details to justify decisions where accommodation has been denied.
10. Advise employees about their right to appeal and their right to approach the CHRC.





Employee's Responsibilities

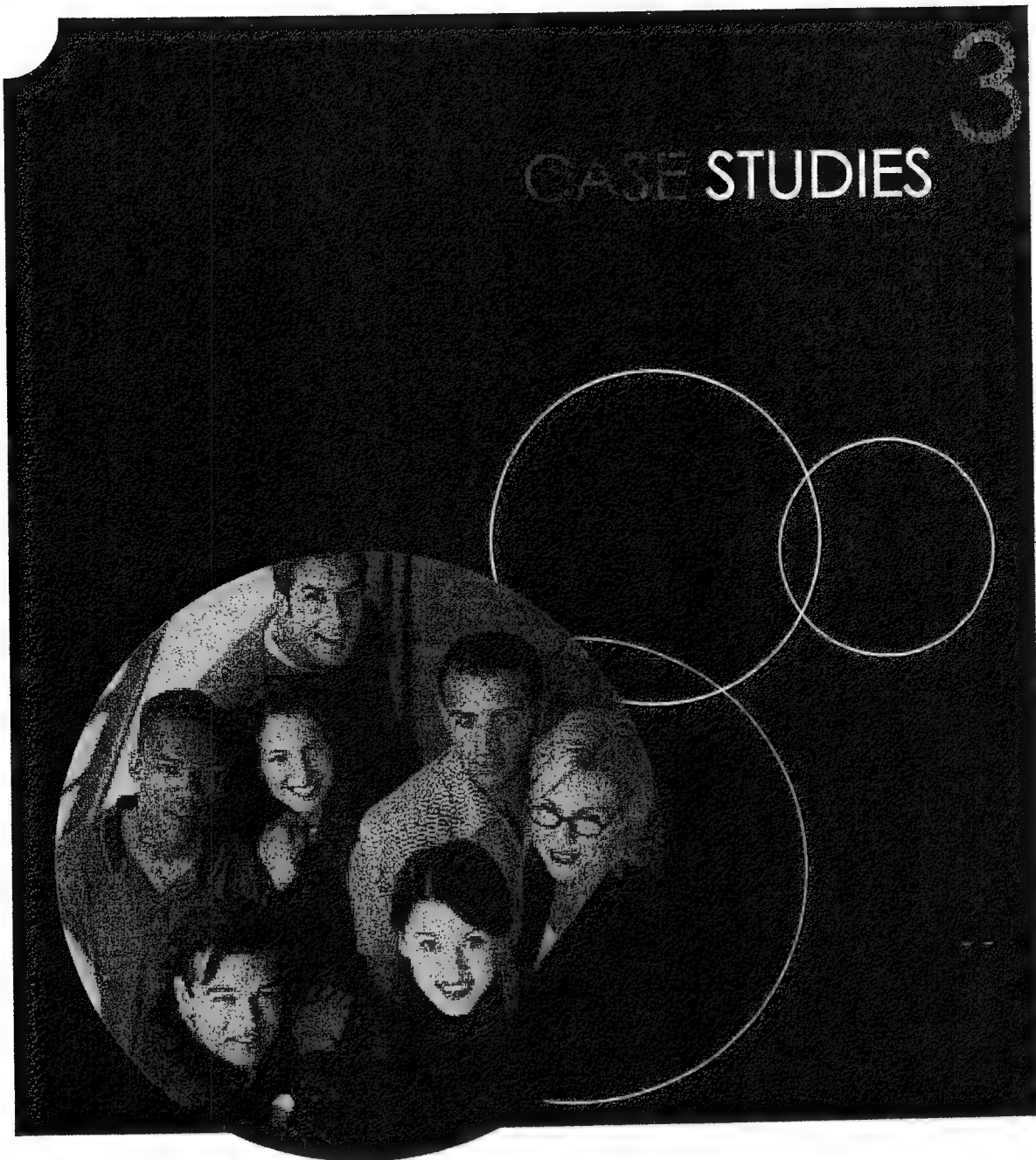
1. Request accommodation when needed and suggest appropriate measures, if possible.
2. Provide information/documentation from a qualified health care professional to clarify health restrictions and describe the type of accommodation that would be most effective.
3. Cooperate with any experts who are asked to provide guidance on the situation.
4. Respond to the employer's reasonable request to undergo an independent medical exam.
Note: employees cannot be forced to submit to an independent medical examination, but failure to comply with a request may delay the accommodation process.
5. Allow a reasonable amount of time for the employer to reply to the request for accommodation.
6. Participate in any discussions regarding possible accommodation solutions.
7. Listen to and consider any reasonable accommodation options that the employer proposes.
8. Achieve the agreed-upon job performance standards once accommodation is provided.

9. Work with the accommodation provider on an ongoing basis to manage the accommodation process.

10. Advise the employer of changes in accommodation needs.

Union Responsibilities

1. Take an active role as partners in the accommodation process.
2. Provide accommodation advice and guidance.
3. Support accommodation measures regardless of the collective agreement, unless to do so would impose undue hardship.
4. Work with the employer to address existing barriers in the collective agreement, ensuring that no new barriers are added.





Employers (including employer representatives such as directors, supervisors, and human resources officials), employees, and unions share in the responsibility to find solutions for managing the return to work. In this section, we provide hypothetical case studies demonstrating these roles and responsibilities. Following each case study are general guidelines for how you might consider approaching the situation if you were the employer or supervisor.

Case Study #1

Employee submits insufficient medical information, refuses to cooperate

An employee approaches his supervisor and says that his doctor has advised him to take eight weeks of sick leave to recover from "stress and burnout." The employee hands his supervisor a doctor's note to confirm this advice, and explains that he needs to be away from work starting right away.

The supervisor notes to himself that this employee has had a troubled history with the organization. The employee has been disciplined on several occasions and has in turn filed a number of grievances against the supervisor and various co-workers. He has made no secret that he would prefer to transfer from his current night shift to a day shift or to a different location, but he doesn't have the seniority to successfully apply for any of these positions. With this new request for leave, the supervisor is concerned that the employee and the doctor randomly requested a lengthy absence.

Nonetheless, since the employee presented a valid doctor's note, the supervisor grants the employee's request. The supervisor schedules the start and end dates of the sick leave.

A few days before he is supposed to return to work, the employee delivers another doctor's note saying he should be transferred to the day shift immediately.



Gather details and assess the situation

Ideally, you would have maintained contact with the employee during their absence and determined that accommodation measures may be necessary prior to their return to work.

In this situation, the employee didn't give you adequate notice prior to their preferred return-to-work date. You should tell them you need more time to consider their request. An employer is entitled to ask for more time to examine and implement an accommodation request when there isn't enough information to make an informed decision.

The doctor's note presented by the employee states that they should be switched to a day shift immediately. However, the note does not provide sufficient information on how the employee's condition will affect their ability to perform their job, nor does it indicate if this is a permanent or temporary situation. Finally, the note does not indicate what alternative work duties the employee would be able to do.

In this case, you should ask the employee if they are able and willing to return to their regular night shift until a decision can be made about the requested shift change. If the employee is unable to do this, look at whether the employee can be temporarily moved to the day shift. If that is not possible, it may be necessary for the

employee to remain on leave. You should keep a record of these proceedings on file.

Consult with health and medical specialists

Since there aren't enough details to make an informed decision, you would have to tell the employee that you need the information clarified by their physician and/or an independent medical assessor.

At this point, you should describe to the employee the organization's internal policies for collecting and protecting the privacy of personal information. Ask for the employee's consent to contact the doctor that supplied the note.

WHAT IF ... the employee refuses to allow you to contact their doctor, or refuses to participate in an independent medical assessment?

An employee has a responsibility to fully cooperate in the effort to find options for reasonable accommodation. This involves permitting a supervisor to gather the appropriate health and medical information they need to make an informed decision, provided that privacy and human rights are respected in the process.



If an employee refuses to help you obtain the health information you need, you should advise them that you cannot continue with the accommodation process—their request will be delayed until such information can be gathered.

Remember that an employer cannot discipline an employee for refusing to undergo a medical examination by a doctor chosen by the employer, nor can the employer discipline an employee for refusing to disclose confidential medical information. It may be helpful if the employer agrees to consult with a physician of the employee's choosing.

In general, you should confirm whether or not the employee can perform their night shift duties. If they cannot, determine whether they could do the job if some of the night shift duties were modified. Finally, if the employee is unable to do their job with modified duties, seek information on what types of tasks the employee would be able to accomplish.

Consult with union representatives

In this example, the employee is requesting accommodation that will have an impact on co-workers' rights and entitlements under collective agreements. Consequently, you would have to

consult with a union representative to discuss options for accommodation. For its part, the union is obligated to assist you in exploring these options. Please refer to page 15 in Part 2 for more details.

If the medical information you collect verifies that the employee should be switched to a day shift, you may need to reassign or reorganize duties that are currently held by the employee's co-workers. You should consult the union about how this will affect seniority rights or collective agreements. Ask the union to suggest potential solutions that will minimize disruption to co-workers.

Review the accommodation options with the employee and other stakeholders

Meet with the employee to review all of the accommodation options that are suitable for the situation. If the medical information supports the employee's need to move to a day shift, then recommend the scheduling option that is least likely to interfere with co-workers' rights under collective agreements.

If the medical information does not support the employee's request, then you are not required to transfer them to a day shift. However,



some changes to their current job duties may still be necessary (if indicated by the medical information collected). You may need to consult with others in your organization to decide on what these modifications would be. You may also need to provide training related to the job's new or modified duties.

WHAT IF... the employee refuses your recommended accommodation options?

The employee is not entitled to a perfect solution, or one that they choose for themselves. They are entitled to accommodation that meets their medically verified needs. If you have offered reasonable accommodation (to the point of undue hardship), then you have satisfied your duty to accommodate. If the employee refuses your proposed accommodation, they should explain why they have rejected the offer.

Implement the accommodation plan

Following a review of the options with the employee, you should implement the agreed-upon accommodation measures so that the employee can return to work as quickly as possible (if they hadn't returned to the job while the request was being considered). Ensure that you monitor the employee's progress to make certain that the accommodation is effective. If the accommodation doesn't address the verified needs of the employee, you may have to make further adjustments. If the employee remains dissatisfied, advise them of their rights to appeal within the organization and/or their right to file a human rights complaint.





Case Study #2

A case of undue hardship?

Mr. B is a 56-year-old man employed as a deck hand on board a ferry. He has permanently injured his shoulder and back, and has been off work for over a year. He has indicated that he is now fit to return to work. His employer arranges for a fitness assessment to ensure that Mr. B can safely complete his job duties. The assessment shows that he must avoid repetitive lifting, carrying, and twisting, and that he should no longer work on board a ship.

As for education and other skills, Mr. B has completed grade 9 and has very limited reading and writing abilities. He is considered a poor candidate for formal upgrading. He has indicated that he is unwilling to relocate to a position outside of his province.

Mr. B's employer believes that the company is unlikely to find a job that can take advantage of his skills given his medical limitations and geographic preferences. The employer has a limited number of light-duty jobs and those positions are in high demand since there has been an increase in the number of employees with disabilities.

In this case, several accommodation procedures have already been completed. You would have already gathered information to assess the situation; consulted with health and medical specialists; and discussed options with the union.

Consider *all* options for accommodation

In order to satisfy the duty to accommodate, an employer must demonstrate that they have explored all possible accommodation options, up to the point of undue hardship.



Mr. B has limited skills and refuses to relocate. This situation may make it very difficult to accommodate him. In spite of Mr. B's preferences, the employer should consider positions in other geographic areas and present them to him. An alternative may be to retrain Mr. B for another position within the organization; however, an employer is not required to create an unproductive position in order to accommodate an employee.

Select the most appropriate accommodation option

After reviewing all potential solutions, the employer should look for a feasible option that accommodates Mr. B's physical limitations and is least likely to interfere with co-workers' rights under collective agreements.

If there are no options for alternative employment, the employer should think carefully about how they would prove that this is a case of undue hardship before considering terminating Mr. B's employment.

Is this a case of undue hardship?

The employer should consider the following questions before concluding that accommodating Mr. B would amount to an undue hardship:

1. Does Mr. B's condition present a health risk to himself?
2. Does Mr. B's condition present a health risk to others?
3. Can any modifications be made to Mr. B's job that will allow him to perform the job?
4. If Mr. B cannot be accommodated in his current position, what alternative positions have been considered?
5. Can Mr. B be moved into a position with a non-bargaining unit or to another bargaining unit?
6. What would be the costs of implementing Mr. B's accommodation? The costs should be quantified and not speculative.
7. Are there reasons why any viable alternatives were not implemented?
8. What discussions have taken place between the employer, the employee, and the union about the situation?
9. Have the employer, the employee, and the union cooperated in attempting to find a solution?



Case Study #3

Employee has returned to work with modified duties but still has not resumed her regular job

Ms. T, a ramp agent at an airport, was off work for four weeks following knee surgery. As instructed by her doctor, she has returned to work on a gradual basis, first working two days per week, then three, then four, and then five days per week. She has also not performed the physically demanding tasks that are part of her job requirements. These tasks were assigned to her co-workers, and she has taken on some of their less strenuous duties.

It has been six months and the original medical assessment done by her doctor indicated that Ms. T should be working without restriction by now. However, she has just presented a doctor's note stating that she should continue with light duties until further notice. Her supervisor believes that some of her co-workers resent having to shoulder the increased workload and worries that this situation might lead to workplace injuries.

Having received the note from Ms. T's doctor, the supervisor has to review the temporary accommodation arrangements and determine whether to extend them, adjust them, or find a new solution altogether.

Clarify medical information

The first step in this case would be to clarify whether or not Ms. T's condition is permanent or temporary. If temporary, you would need to find out approximately when she would be expected

to recover, or when you should re-evaluate the situation. You should ask for Ms. T's consent to ask her doctor for this information.

In addition, you may need to ask Ms. T to participate in an independent assessment of her abilities by an occupational specialist. This would provide a clearer sense of which physical tasks she is to avoid. Perhaps she is now able to complete some of the physically demanding tasks, but unable to complete others.



Consider alternative positions or reassigning job duties

If Ms. T's condition is permanent, you should look at alternative permanent positions within the company that match her skill set. You may need to consult with others in your organization for help on this. If no alternative positions are available, you may need to consider making Ms. T's temporary duties into a permanent job.

While you may have concerns that Ms. T's co-workers resent having to take on some of her more physically demanding tasks, remember that the complaints of co-workers would not be considered sufficient grounds to reject a suitable accommodation option. Nonetheless, when evaluating potential solutions, you should consider factors such as an unfair workload distribution, the need for a major reorganization, and the risk of relapse. These factors may influence your selection.

If you are worried about the safety of Ms. T's co-workers, you may need to reassign certain tasks so that the physically demanding duties are more evenly distributed among the group. If co-workers' safety continues to be a concern and the issue cannot be resolved, you may have to seek guidance from others in your organization on ways to resolve this issue.

If you still cannot come to a clear accommodation solution and are wondering if this is a case of undue hardship, remember that you'd have to provide evidence of this based on the health, safety, and financial factors of the case. Please review the section on undue hardship on page 7 for more details.



Case Study #4

Employee returns to work in a safety-sensitive position

Mr. C, a truck driver, has been off for over a year following a diagnosis of multiple sclerosis. His condition has stabilized and his employer, a trucking company, has been informed that he is now in remission. Mr. C's insurance company has determined that he is fit to return to work and has cut his long-term disability benefits.

On Friday, Mr. C informs his supervisor that he is capable of returning to work as of the next Monday. He presents a medical certificate from a specialist in multiple sclerosis indicating that he is fit to work without restriction. The trucking company is concerned that their employee may suffer an attack while on the road, resulting in a catastrophic accident for which they will be held liable.

In this situation, Mr. C has not given you much notice to prepare for his return to work. Since Mr. C holds a safety-sensitive position, you may need additional time to ensure that he is indeed fit to safely complete the duties in his job description. Keep in mind that an employer has a responsibility to protect the health and safety of everyone in the workplace. An employer also has an obligation to minimize the risks of a health or safety problem recurring.

Ideally, you would have maintained contact with Mr. C while he was on leave to find out approximately when he would be ready to return to work. This way, arrangements could be made in advance.

Learn about Mr. C's condition

Mr. C has told you he has been diagnosed with multiple sclerosis (MS). Since you have this information, you should learn about what MS is, whether there are different types of the disease, and how it could affect Mr. C's ability to work. Don't make assumptions based on what you've heard about the disease or stereotypes associated with it. Look for information through the MS Society Web site or at your local library.



Verify that Mr. C can safely resume work

The next step would be to verify that Mr. C is fit to return to his job. You have a medical certificate but since this is a safety-sensitive position, you need to verify that the certificate was completed based on an understanding of what Mr. C does at work. Do not rely on the decision of Mr. C's insurance company to stop paying benefits as an indication that he can return to work safely. Instead, ask for Mr. C's consent to contact the MS specialist who signed the medical certificate for further details. Make sure that the specialist has read through Mr. C's job description and has confirmed that he can safely perform his duties. Verify if any medication he may be taking would have an impact on his ability to perform his job duties.

Note: If an employer refuses to return an employee to work because of health or safety concerns, they should be able to demonstrate evidence of a verifiable risk. A potential or hypothetical risk is not sufficient grounds to refuse the employee's return to work.

Consider arranging independent medical assessments

If, after contacting the MS specialist, you need further details on Mr. C's ability to work, you should arrange for an independent medical assessment. Also, since Mr. C is in remission and may become ill at some point in the future, you may regularly need to evaluate his ability to work. For example, he may need to participate in annual or semi-annual medical assessments.



Case Study #5

Reasonable accommodation versus perfect accommodation

Ms. K works as a payroll clerk for a large government department. In the past few years she has become increasingly sensitive to airborne allergens, especially mould and perfumes. She experiences headaches, fatigue, gastrointestinal distress, and mental confusion when exposed to certain environmental triggers. She has been off work for increasingly lengthy periods of time. While off work, she has been diagnosed with environmental sensitivities. A Health Canada assessment has indicated that she is fit to return to work but recommends that she avoid air conditioning, perfumes/colognes, and mould.

The employer has instituted a scent-free policy in the workplace and offered to return Ms. K to her position as a payroll clerk in a closed office with air purifiers. The employer has also offered her the option of tele-working. Ms. K insists that, in order to create a healthy work environment, the employer move her to a space in a newly constructed "green" office building in the city. The government does not own or lease any space in this building, and so the employer is unwilling to accommodate Ms. K in this manner.

In this case, several accommodation procedures have already been completed. The employer has gathered information to assess the situation; arranged for a Health Canada physician to assess Ms. K's condition; and presented her with two accommodation options.

Ensure that your proposed accommodation options meet Ms. K's medical needs

Ms. K insists that she needs to be moved to an office in a new "green" office building. Before examining the feasibility of this request, you should review the accommodation options that have already been presented—the option of a closed office with air purifiers and the option of tele-working. You need to confirm whether these options would successfully meet Ms. K's



medically verified needs according to the Health Canada assessment and any other medical information you have gathered. If you need further information, contact the Health Canada physician who completed the assessment.

You should also examine the option of moving Ms. K to a green office building. Determine the costs and feasibility of this option. Consult with the medical experts to find out if this form of accommodation is absolutely necessary, or if the other options would also meet the employee's requirements.

Since the government does not own or lease any space in the green building, moving Ms. K there could prove difficult. If at least one of the other accommodation options meets Ms. K's needs and is the best option from the employer's perspective, then this option may be selected.

Remember that the employer is responsible for choosing the appropriate accommodation solution, not the employee. While it's important to take the employee's preferences into consideration, the employer has a right to run a productive workplace and to minimize disruption for other parties whenever possible. An employee cannot expect a perfect solution and must accept any arrangement that is reasonable in the circumstances. If you determine that at least one of the proposed options in this case will

successfully meet Ms. K's needs, then you will have satisfied your duty to accommodate.

Advise Ms. K of your decision, your reasons, and her right to appeal

If Ms. K remains dissatisfied, advise her of her right to appeal within the organization and/or her right to file a human rights complaint.



Recommended Resources

Following is a list of recommended resources to help you understand issues surrounding human rights in the workplace. You can download these documents by visiting the Web site addresses below. Alternatively, you can request copies by calling the CHRC at 1-888-214-1090.

- Human Rights and the Return to Work: The State of the Issue
http://www.chrc-ccdp.ca/research_program_recherche/RTW_RAT/toc_tdm-en.asp
- A Place for All: A Guide to Preventing Discrimination
http://www.chrc-ccdp.ca/discrimination/APFA_UPPT/toc_tdm-en.asp
- Duty to Accommodate Fact Sheet
http://www.chrc-ccdp.ca/preventing_discrimination/duty_obligation-en.asp
- Duty to Accommodate FAQ
http://www.chrc-ccdp.ca/preventing_discrimination/toc_tdm-en.asp
- Barrier-Free Employers
http://www.chrc-ccdp.ca/discrimination/barrier_free-en.asp
- Bona Fide Occupational Requirements and Bona Fide Justifications under the *Canadian Human Rights Act*
<http://www.chrc-ccdp.ca/discrimination/occupational-en.asp>
- The Privacy Commission of Canada's *Privacy in the Workplace* Fact Sheet
http://www.privcom.gc.ca/fs-fi/02_05_d_17_e.asp
- The National Institute of Disability Management and Research
<http://nidmar.ca>



Health Canada Santé Canada

Occupational Health Assessment Process (including Fitness To Work Evaluations)

CONSENT TO UNDERGO A FITNESS TO WORK EVALUATION

I, (name) _____, agree to undergo a Fitness To Work Evaluation (FTWE) which will be conducted by the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada. The purpose of the evaluation is to determine my fitness to work. The reasons I have been referred to WHPSP to undergo the Evaluation have been fully explained to me by _____, and provided to me in writing by him/her.
(Name/Department)

I understand and agree that my department will provide to the WHPSP medical personnel a detailed description of the nature of their concerns about my medical fitness to work and that I will receive a copy of this written referral before the medical assessment. I have read the Fitness To Work Evaluation information package. I understand that my department including Human Resources is restricted by the *Privacy Act* to release to the WHPSP physician only information directly relevant to my situation as described in the written referral and necessary to make the assessment.

I authorize WHPSP to provide my employing department with an interpretation of the Fitness To Work Evaluation which will contain a description of my abilities to perform the duties of my position including any functional limitations that may arise due to medical (physical and mental) conditions identified during the Evaluation. WHPSP will not disclose any clinical information to my employing department.

Information collected by WHPSP will be retained in my occupational health medical file which will be retained by WHPSP, Health Canada. Information collected by WHPSP will be merged with other information previously collected and retained on the WHPSP medical file. This medical file may be referenced by WHPSP medical personnel should I undergo another Occupational Health Assessment or Fitness To Work Evaluation in the future.

This information is collected by WHPSP for the purpose of administering the Treasury Board's Public Service Health Program. The information will be treated as personal information in accordance with the provisions of the *Access to Information Act* and the *Privacy Act*. The records will be held in Regional Information Banks PCE 701 (Occupational Health Medical Records), PCE 702 (Public Service Health Medical Advisory Committee) and/or PCE 703 (Health Unit Files) and I may request a copy from the WHPSP office or clinic in accordance with provisions of the *Privacy Act*.

I have read the information above or had it explained to me and I understand the nature of a Fitness To Work Evaluation and the uses to which the personal information collected by WHPSP may be put. I have had the opportunity to seek independent advice or the advice of my union. I declare that my consent has been given voluntarily. I understand that I may withdraw my consent at any time. Where I revoked my consent to undergo a Fitness To Work Evaluation, I authorize WHPSP to advise my employing department that I have done so.

Unless previously revoked by me, this consent to the evaluation and interpretation as specified expires on: (date) _____.

Signature: _____
(Signature and print)

Date: _____

Witness: _____
(Signature and print)

Revised June 2006

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Occupational Health Assessment Process (including Fitness To Work Evaluations)

CONSENT TO RELEASE MEDICAL INFORMATION

(Confidential when completed. To be completed by worker and placed in a confidential, sealed envelope to be sent to WHPSP. Not to be seen by HR Manager unless the employee specifically requests help from HR in order to complete the form.)

I, (name) _____, authorize: (name of physician, health facility or health professional) _____

to discuss with and/or disclose the contents of my medical file to the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada for the purpose of providing an occupational health medical assessment including a Fitness To Work Evaluation (FTWE). I authorize the medical personnel of WHPSP to discuss/disclose the contents of my medical file held by WHPSP to the above-named physician, health facility or health professional.

The information is being collected by Health Canada in order to administer the Treasury Board's Public Service Health Program. It will be treated as personal information in accordance with the provisions of the Access to Information Act and the Privacy Act. WHPSP undertakes to maintain the confidentiality of the information and only WHPSP physicians, nurses or administrative staff will have access to it. WHPSP will not disclose the personal information without my written consent except where disclosure is required by Law. The records will be held in Regional Information Banks PCE 701 (Occupational Health Medical Records), PCE 702 (Public Service Health Medical Advisory Committee) and/or PCE 703 (Health Unit Files) and I may request a copy from the WHPSP office or clinic in accordance with provisions of the Privacy Act.

I authorize WHPSP to place the information in my WHPSP occupational health medical file along with information that may be currently held there. I understand that this medical file may be referenced in future evaluations.

In the event that I am referred to WHPSP for another Occupational Health Assessment in another region, I agree that my entire occupational health medical file may be transferred from one WHPSP physician, medical officer or clinic to another in order to facilitate subsequent Fitness To Work Evaluations.

I declare that I have read the information above or had it explained to me and I understand the nature of the Evaluations and the uses to which the collected information may be put. I declare that my consent to the exchange of information specified above has been given voluntarily. I understand that I may withdraw my consent at any time.

Unless previously revoked by me, this consent to the release of information, its evaluation and interpretation as specified expires on: (date) _____

Signature: _____ Date: _____
(Signature and print)

Witness: _____
(Signature and print)

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REASONS FOR PERFORMING A FITNESS TO WORK EVALUATION

A Fitness to Work Evaluation (FTWE) is a **special type** of Occupational Health Assessment. It is performed by the Workplace Health and Public Safety Programme (WHPSP) at the request of management when there is a concern that you may have a health problem which could impact on your ability to work.

FTWEs are performed in the following situations:

CHANGE IN WORKING CONDITIONS OF EXISTING JOB

When the existing working conditions have been significantly altered.

CHANGE IN HEALTH STATUS

When an employee develops health problems that may be aggravated by existing working conditions.

PERFORMANCE-INITIATED REVIEW

When health reasons are identified as the cause of falling job performance and a medical review has been suggested (job not yet at risk) or required (job at risk) by the employer.

CONTINUING IMPAIRMENT

When an employee remains absent from work for a prolonged period and must be reassessed to update disability status.

RETURN TO WORK

When an employee is returning to work after recovery from a serious illness or injury and the person's capability of performing the original job is not known.

When an employee has returned to work at a modified job and is still undergoing therapy, rehabilitation or both.

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REASONS FOR PERFORMING AN OCCUPATIONAL HEALTH ASSESSMENT

An Occupational Health Assessment is routinely performed by the Workplace Health and Public Safety Programme (WHPSP) to assess whether you meet the medical requirements of your position.

Occupational Health Assessments are performed in the following situations:

PREPLACEMENT

When an employee has been offered a full or part time job subject to passing a relevant medical evaluation.

CHANGE IN WORKING CONDITIONS OF EXISTING JOB

When the existing working conditions have been significantly altered.

PERIODIC HEALTH ASSESSMENT

This assessment is based upon the nature of your job and the need to detect or prevent health changes that may affect the health and safety of you and others.

JOB TRANSFER

When an employee transfers to a position whose working conditions are significantly different than the previous position.

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EMPLOYEE GUIDE FOR FITNESS TO WORK EVALUATIONS

Why Have I Been Referred to WHPSP?

Your employer has referred you to the Workplace Health and Public Safety Programme (WHPSP) for a Fitness to Work Evaluation (FTWE) to assess whether you meet the medical requirements of your position. Management is concerned that you may have a health problem which may impact on your ability to work. It is expected that your manager or human resources advisor will have reviewed with you the reasons for the assessment, and provided you with a copy of the FTWE request which was sent to WHPSP.

What is the Purpose of the FTWE?

The purpose of the FTWE is to determine your fitness to safely carry on with all of your duties as described in your Job Analysis, or your fitness for alternate employment. It is also to define any limitations caused by your illness or injury.

What is the Process of the FTWE?

Your human resources advisor will send a letter of referral to WHPSP, specifying the reasons for the request. A completed Job Analysis will be sent as well. Your department will notify you of your appointment.

You will be assessed by a WHPSP Occupational Health Medical Officer (physician). A complete history with a physical examination, limited to the pertinent areas, will be performed either by the Occupational Health Medical Officer (OHMO) or by one of the WHPSP designated physicians who will send his report to the OHMO.

Additional evaluation may include laboratory tests and an assessment by a psychologist or other consulting specialist.

The Occupational Health Medical Officer may contact your own personal physician or specialist, with your consent, to obtain additional medical information/opinions.

What Should I Do to Prepare for my Appointment?

We recommend that you advise your treating physician of the referral. Your doctor is welcome to contact us. If possible, bring your medical and pertinent medical reports/test results with you. Once you have been informed of the process and you have agreed to the FTWE, please fill out the *Consent to a Fitness to Work Evaluation* as well as the *Consent to Release Information* forms.

What Happens After I Have Been Seen at WHPSP?

The OHMO is a consultant. He/she may discuss treatment recommendations with you, but will not prescribe treatment. You remain under the care of your treating physician at all times. The OHMO may contact your physician (with your consent only) and/or the human resources advisor involved in your case, to gather any additional pertinent information.

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What Will WHPSP Tell my Employer?

Following your medical evaluation, the Occupational Health Medical Officer will tell your department in writing whether you meet the medical requirements of your position, as described in your job analysis. The OHMO may suggest certain restrictions concerning your ability to perform your job. Your department may then be able to adjust your duties to accommodate these limitations.

However, the final decision regarding your employability or any work modification rests with your employer. Examples of limitations include a gradual reintegration on a part-time basis, or avoidance of certain physical tasks such as heavy lifting, repetitive movement of an affected limb and overhead work. It may also be recommended that you be supplied with additional equipment at work.

Please note that at no time will anyone, including your employer, receive any confidential medical information unless you have given informed consent in writing or as required by law.

Will I Be Advised of WHPSP's Decision?

Yes. If the decision is not clear at the time of your assessment, WHPSP will notify you at a later date. You will receive copies of all letters sent to your department. Please contact your human resources advisor if you have additional questions. You may also discuss any outstanding issues with the OHMO at the time of your assessment.

How to reach us

Halifax	(902) 426-5023
St. John	(709) 772-5571
Moncton	(506) 851-7005
Charlottetown	(902) 566-7873
Quebec	(418) 648-7205
Montreal	(514) 283-2463
Ottawa	(613) 954-6541
Toronto	(416) 973-1178
Winnipeg	(204) 983-6330
Regina	(306) 780-6448
Edmonton	(780) 495-6695
Calgary	(403) 292-5525
Vancouver	(604) 666-7310
Victoria	(250) 363-3566
Head Office	(613) 957-7668

December 2005

Handling Disability Management Cases - Employee Is Unable to Return to Work: Options

Despite the best efforts of all the involved parties, the employee is sometimes unable to return to work due to the nature of the injury, illness or medical condition. At other times, repeated return-to-work attempts are unsuccessful. In these cases, managers should do the following:

- Consult Human Resources for support in developing a letter outlining the employee's options for separating from employment, and get the letter to the employee in a timely fashion.
- Make sure that any correspondence is by registered mail.
- Advise the employee to consult Human Resources or Compensation if the employee needs assistance in determining the best option for the employee's situation.
- Give the employee a reasonable period of time to make the necessary personal adjustments and to prepare for separation from employment.
- Let the employee know that EAP services are available for support (while they are still employed) during this transition.
- If applicable, discuss the situation with your team, maintaining the employee's right to privacy. Where possible, consult with the employee before this discussion to determine what information, if any, the employee would like you to share.

Once the employee has decided on a course of action, choose the appropriate scenario for the current case or situation:

- The employee will retire on medical grounds. Proceed to Employee is unable to return to work (in the foreseeable future): The employee will retire on medical grounds.
- The employee will resign or retire. Proceed to Employee is unable to return to work (in the foreseeable future): Employee will resign or retire.
- The employee will not resign or retire. Proceed to Employee is unable to return to work: Demotion or Termination of employment (non disciplinary).

Employee Is Unable to Return to Work (in the Foreseeable Future): The Employee Will Retire on Medical Grounds

Medical retirement is a possibility for employees who are not fit to work in any capacity. In a case where the employee chooses to pursue medical retirement, managers should:

- Ensure that the employee has the appropriate documentation for the medical practitioner to complete. Health Canada must approve the medical retirement if the employee is to receive benefits for government service through the *Public Service Superannuation Act*.

If, based on the Health Canada decision, the employee is able to retire on medical grounds:

- Have the employee exhaust all accumulated sick leave before the effective date of the employee's retirement on medical grounds.
- Secure the employee's letter confirming retirement on medical grounds.
- Process the termination of employment documentation in consultation with Compensation.

If, based on Health Canada decision, the employee is not able to retire on medical grounds, choose the appropriate scenario:

- The employee will resign or retire. Proceed to Employee is unable to return to work (in the foreseeable future): Employee will resign or retire.

- The employee will not resign or retire. Proceed to Employee is unable to return to work: Demotion or Termination of employment (non disciplinary).

Employee Is Unable to Return to Work (in the Foreseeable Future): Employee Will Resign or Retire

When the employee chooses to resign or retire:

- Obtain the employee's letter confirming the employee's resignation or retirement.
- Process the termination of employment documentation in consultation with Compensation.

Employee Is Unable to Return to Work: Demotion or Termination of Employment (Non-Disciplinary)

Demotion or termination of employment under the Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation may be considered when an employee:

- Is unable to return to work within a reasonable period of time in any reasonable capacity and accommodation options have been exhausted;
- Has either not applied for or was not eligible for a medical retirement; and
- Has not resigned or retired.

A number of options for separation from the public service should be reviewed. First, however, after the employee has exhausted sick leave credits, enough sick leave without pay should be authorized for the employee (or the employee's power of attorney) to work with the manager and Human Resources to make preparations for separation on medical grounds. At a minimum, advisors should include Human Resources and Compensation and Benefits Advisors, as well as the employee's union representative (if applicable).

The employee should be offered the following options:

- Resignation: Depending on years of service and the collective agreement, the employee may be entitled to severance pay (but would lose entitlement to health and dental benefits and, if unrepresented, some benefits provided under PSMIP).
- Termination of employment for medical incapacity: This option could offer an entitlement to more severance pay than with resignation, particularly if the employee has fewer years of service.
- Retirement on medical grounds and an opportunity to apply for a disability pension under the *Public Service Superannuation Act (PSSA)*: Health Canada must certify that the employee's condition meets the PSSA's definition of disability.
- If the employee is aged 50 or older, applying for a retirement pension under the PSSA, with a possible reduction because of age or insufficient years of pensionable service.

Each of these options will have different ramifications for the income and benefits a disabled employee receives after employment ceases. For more information, refer to Managing for Wellness - 5.5 - When a Return to Work Is Not Possible.

A manager should ensure that the employee or the employee's power of attorney fully understands the implications of the termination options before a final decision is made.

5.5 When a Return to Work Is Not Possible

In some situations, when the prognosis is very poor and/or the treating physician reports permanent and severe limitations that make a return to work highly unlikely, it may be clear early on that a return to work will not be possible. As a manager, the leadership, sensitivity and compassion you exhibit in managing these cases sends a powerful message to all your employees. For individuals for whom it is clear a return to work is not possible, depending on the severity of the functional limitations caused by the illness or injury, the employee may not be in a position to discuss or review options concerning termination of employment. In this case, whoever possesses power of attorney will likely be your main point of contact.

Normally, in cases where it is highly unlikely the employee will be able to return to duty, under the Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation, a number of options for separation from the public service should be reviewed. First however, after the employee has exhausted sick leave credits, you should authorize enough sick leave without pay for the employee and/or his or her power of attorney to work with you and your team of HR advisors to make preparations for separation on medical grounds. At a minimum, your advisors should include your labour relations and compensation and benefits advisors, as well as the employee's union representative (if applicable).

The options to present to the employee are outlined in the following:

- Resignation, in which case, depending on years of service and the collective agreement, he or she may be entitled to severance pay (but would lose entitlement to health and dental benefits and, if the employee is unrepresented, some benefits provided under PSMIP);
- Termination of employment for medical incapacity, in which case he or she may be entitled to more severance pay than with resignation, particularly if the employee has fewer years of service;
- Retiring on medical grounds and applying for a disability pension under the PSSA, in which case Health Canada certifies whether the employee's condition meets the PSSA's definition of disability; or
- If the employee is aged 50 or older, applying for a retirement pension under the PSSA, potentially with a reduction because of age and/or insufficient years of pensionable service.

Each of these options will have different ramifications for the income and benefits a disabled employee receives after employment ceases. All factors, such as the employee's age, years of pensionable service, and whether he or she has been found eligible to receive Workers' Compensation, CPP/QPP disability benefits and/or income replacement benefits under DI or PSMIP LTD under the insurers' definition of "total disability," need to be considered. For example, depending on the option selected, the employee may not be eligible for continuing coverage under the Public Service Health Care Plan or Dental Plan; he or she may lose coverage under the Supplementary Death Benefit Plan, and his or her survivors may not be eligible for certain survivor benefits under the PSSA. Refer to www.pensionandbenefits.gc.ca for helpful information on how pensions are calculated, including in cases of retirement because of www.tbs-sct.gc.ca/pubs_pol/hrpubs/pensions/psppg-corpfrp-eng.asp.

You are advised to ensure that the employee (or his or her power of attorney) fully understands the implications of the termination options before a final decision is made. The goal should be to ensure that the employee and/or his or her power of attorney are provided with all the necessary information to make the best possible decision for the employee and his or her family.

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What Employees Should Know About Their Disability Entitlements and Benefits

- **You cannot receive income replacement under DI or PSMIP LTD until you have exhausted your sick leave credits. However, you should apply for DI or PSMIP LTD as soon as possible, even if you have a lot of accumulated sick leave.** Ask your organization's compensation advisor for the necessary forms. Applying as early as possible helps ensure that all the medical information the insurer needs to process your claim is collected in time to approve the claim with no interruption in your income benefits.
- **If you run out of sick leave credits, your manager may be able to award you advance sick leave** if you request it. When you return to work, the sick leave credits you earn will be applied to what you owe before they start accumulating again. Alternatively, you can apply for Employment Insurance sickness benefits to bridge the gap between sick leave and receiving DI or PSMIP LTD income replacement benefits.
- **If you are injured or ill because of an incident at work, you may receive full pay under injury-on-duty leave for up to 26 weeks and Workers' Compensation benefits after that, but only if your illness or injury is determined by a Workers' Compensation Board to be work-related.** However, it takes time for a Workers' Compensation claim to be approved, and you may have to rely on your sick leave credits while you wait for a decision. They will be credited back to you if your claim is approved.
- **After you have been on sick leave without pay for a period of one year (at one time or consecutively), you can be replaced on an indeterminate basis.** If there is a reasonable prospect that you can return to work, your manager may be able to extend this up to two years. Therefore, it is important to work with your manager, your union representative if you are represented, and your disability benefits provider (Sun Life or Industrial Alliance, or the Workers' Compensation Board) to access rehabilitation services as soon as possible. If you are not working on a return-to-work plan and your insurance provider determines that you can return to work after one year, there is no guarantee that your previous position will be available to return to. You may have to wait for a new appointment, during which time you will not receive income replacement benefits.
- **If you decide to apply for a disability pension, you cannot assume that you will qualify for DI or PSMIP LTD to age 65.** Your file will be assessed by Health Canada to determine if you qualify for disability pension under the Public Service Pension Plan. If you do, and if you qualify for disability benefits under the Canada Pension Plan or the Quebec Pension Plan, this does not necessarily mean that you will be found totally disabled by the DI or PSMIP LTD insurers. Each source of benefits uses a different definition of disability. Also, your claim will be reviewed periodically by the insurer until you reach age 65 to ascertain that you continue to meet its definition of total disability.



Injury-on-Duty Leave

1. Introduction

In virtually all cases where the Treasury Board is the employer, employees disabled due to an occupational illness are entitled to injury-on-duty leave with full normal pay for such reasonable period as is determined by the employer, where the disability is confirmed by a Provincial Workmen's Compensation Board pursuant to the *Government Employees Compensation Act*.

2. Authority

For the majority of employees, provisions for injury-on-duty leave are negotiated through the process of collective bargaining and the provisions are contained in the collective agreements. To determine the injury-on-duty leave provisions applicable to specific groups, the relevant collective agreement must be consulted.

Injury-on-duty leave may also be granted, in accordance with the *Public Service Terms and Conditions of Employment Regulations*, to employees whose terms and conditions of employment are governed by these Regulations.

The following "Management guidelines for the administration of injury-on-duty leave" have been developed in consultation with several departments, including Labour Canada, which administers the *Government Employees Compensation Act*. Departments should ensure that all personnel associated with the administration of injury-on-duty leave are familiar with these guidelines.

3. Guidelines

3.1 General

Injury-on-duty leave should not be granted unless an injury report has been submitted to Labour Canada pursuant to the *Government Employees Compensation Act*, and the claim is subsequently allowed. Departments should ensure that verification of the period of disability is obtained from Labour Canada before approving such leave and periodically, where necessary, to confirm continuing disability. In the case of a minor (non-disabling) injury where no time is lost beyond that required for immediate medical treatment, the employee should be allowed appropriate time off with pay to obtain such treatment.

3.2 Verification of disability period

In the case of a disabling injury, that is, any injury which prevents the employee from returning to work for the next regular shift or any subsequent workday, departments should, prior to granting or terminating injury-on-duty leave, ensure that certification verifying disability and the date on which such disability commences or ceases has been received from Labour Canada. In cases involving extended periods of injury-on-duty leave, periodic

verification should be requested from the appropriate regional office of Labour Canada, as necessary to support the continued provision of this leave. Labour Canada form APC-5(71) is used to inform departments in this regard.

While a department is awaiting the receipt of certification required for the granting of injury-on-duty leave, the disabled employee may be granted sick leave to the extent of his or her sick leave credits. If the employee has insufficient sick leave credits, he or she may be advanced additional sick leave in accordance with the terms of the applicable collective agreement or other applicable authority. When sick leave is granted and injury-on-duty leave is subsequently approved for the same period, the employee is to be credited with the number of days of sick leave involved.

3.3 Medical review

If there is a reasonable doubt concerning the disability status of an employee at any time while on injury-on-duty leave, a special medical assessment of the employee's physical condition can be made by the department through the nearest medical service regional office of Health and Welfare Canada. If, as a result of this medical assessment, the employee is considered fit for work, this should be reported immediately along with all supporting documents, to the appropriate regional office of Labour Canada, which will arrange for a review of the employee's disability status.

3.4 Termination of injury-on-duty leave

Injury-on-duty leave should not be granted beyond the date certified through Labour Canada that the employee is fit for work, including "light duty" work, where it is available. (An employee reporting to the department that he or she has been medically authorized to return to work may do so, pending the receipt of confirming certification from Labour Canada.)

An employee who has been authorized to perform "light duty" work should be provided with work which is commensurate with his or her physical capability. If such work is not available and the employee's disability is of a temporary nature, injury-on-duty leave may continue to be authorized, subject to paragraph 3.2, until appropriate work is found for the employee, or until he or she has been certified as ready to assume normal duties.

Should the total period of injury-on-duty leave granted to an employee with respect to an injury or illness reach 130 working days, a special departmental review of the case should be carried out and a decision made as to whether or not the continued provision of such leave beyond this period is warranted.

Where a decision is made to discontinue the provision of injury-on-duty leave to a disabled employee, the appropriate regional office of Labour Canada should be immediately notified of the date that injury-on-duty leave will terminate. Upon receipt of such notification, Labour Canada will make the required arrangements for the disabled employee to receive Provincial Workers' Compensation payments from the date injury-on-duty leave ceases until the claim is settled. (Provincial wage compensation benefits for totally disabled employees are generally 75% of earnings, based on a maximum annual earnings ceiling. Specific information concerning provincial compensation benefits may be obtained from the appropriate regional office of Labour Canada.)

4. Reference

This chapter replaces chapter 5-2 of *PMM* volume 16.

5. Enquiries

Enquiries concerning the above should be directed through the appropriate departmental representative to:

*Benefits Group
General Personnel Policy Development and Compensation Division
Personnel Policy Branch
Treasury Board Secretariat*



Directive on Leave and Special Working Arrangements

1. Effective date

1.1 This directive takes effect on April 1, 2009.

1.2 It replaces the *Leave Without Pay Policy* dated December 17, 1981.

2. Application

2.1 This directive applies to persons appointed to the core public administration as defined in section 11 of the *Financial Administration Act* unless excluded through specific acts, regulations or Orders in Council.

3. Context

3.1 This directive supports the *Policy on Terms and Conditions of Employment* by providing direction to departments that will ensure the equitable, accurate, consistent, transparent and timely administration of leave provisions and special working arrangements across the core public administration.

For the purposes of this directive, persons appointed to the core public administration include persons appointed to a position as any one of the following:

- an indeterminate;
- a term of three months or more;
- a term of less than three months;
- a casual worker;
- a person on an as and when required basis;
- a seasonal worker;
- an excluded employee;
- a person in an unrepresented group;
- a person employed part-time; or
- a part-time worker

3.2 Persons appointed to the core public administration may be granted leave in accordance with the provisions of the relevant collective agreement or terms and conditions of employment. Where there is conflict or incompatibility between a provision of the collective agreement and the Treasury Board terms and conditions of employment policy instruments, the provisions of the collective agreement apply.

3.3 This directive is issued pursuant to sections 7 and 11.1 of the *Financial Administration Act*.

Directive on Leave and Special Working Arrangements

3.4 The Treasury Board has delegated to the president of the Treasury Board the authority to amend this directive.

3.5 The following appendices establish criteria to be followed with respect to the management of certain authorized paid and unpaid absences from work:

- Appendix A - Leave with Pay or Time Off With Pay
- Appendix B - Leave Without Pay

3.6 Persons appointed to the core public administration may participate in special working arrangements in accordance with this directive under the pre-retirement transition leave and leave with income averaging special working arrangements. The following appendices establish criteria under which these working arrangements may be established:

- Appendix C - Pre-Retirement Transition Leave: A Special Working Arrangement
- Appendix D - Leave with Income Averaging: A Special Working Arrangement

3.7 This directive is to be read in conjunction with the following:

- collective agreements;
- the Public Service Employment Act;
- the Policy on Terms and Conditions of Employment;
- the Directive on Terms and Conditions of Employment; and
- relevant policies and directives on terms and conditions of employment that are specific to certain groups.

4. Definitions

Core public administration (*administration publique centrale*)

Refers to departments named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act*.

Leave with pay (*congé rémunéré*)

Is an authorized paid absence from work in accordance with the relevant collective agreement or terms and conditions of employment.

Leave without pay (*congé non rémunéré*)

Is an authorized unpaid absence from work, in accordance with the relevant collective agreement or terms and conditions of employment, while maintaining continuity of employment.

Leave with income averaging (*congé avec étalement du revenu*)

Is an authorized working arrangement whereby eligible persons are able to reduce the number of weeks worked in a specific 12-month period by taking leave without pay for a period of between 5 weeks and 3 months. Although pay is reduced and averaged out over the 12-month period, pension and benefits coverage (as well as the applicable premiums and contributions) continue at the pre-arrangement levels.

Person with the delegated authority (*personne avec le pouvoir délégué*)

Is a person identified under the departmental delegation of authorities instrument for the administration of leave.

Political activity (*activité politique*)

Has the same meaning as established under Part 7 of the *Public Service Employment Act* for the purpose of this directive.

Pre-retirement transition leave (*congé de transition préalable à la retraite*)

Is an authorized working arrangement whereby eligible persons who are eligible for an unreduced pension or are within two years of becoming eligible for an unreduced pension are able to reduce the length of their workweek by up to 40 per cent. The person's salary

is reduced while the pension and benefits coverage (as well as the applicable premiums and contributions) are maintained at pre-arrangement levels.

Public service (*fonction publique*)

Has the meaning given to that expression in the *Public Service Superannuation Act*.

Special working arrangements (*modalités de travail spéciales*)

Is, for the purpose of this directive, pre-retirement transition leave and leave with income averaging.

Time off with pay (*temps librepayé*)

Is, for the purpose of this directive, a paid absence from work (for a short duration as defined in Appendix A of this directive) for one of the three following reasons: time-off for voting; time-off owing to adverse climatic or environmental conditions; and time-off for personal medical and dental appointments.

5. Directive statement

5.1 Objective

The objective of this directive is to ensure that departments within the core public administration manage paid and unpaid absences from work and special working arrangements in a sound, consistent and effective manner.

5.2 Expected results

The expected results of this directive are that:

- persons appointed to the core public administration are accorded leave benefits in accordance with their relevant collective agreement or terms and conditions of employment; and
- absences from work and special working arrangements are administered and managed in an accurate, equitable, transparent and timely manner.

6. Requirements

6.1 Senior departmental human resources officials or any other person named by the deputy head are responsible for the following:

- ensuring that systems, processes or procedures are in place to track leave without pay for other reasons, as detailed in Appendix B, in cases where the reason for such leave is for political activity as defined in Part 7 of the *Public Service Employment Act*;
- ensuring that the organizational structure, resources, procedures, systems and controls are in place for the secure, accurate and timely application and administration, within their organization, of all types of leave and special working arrangements as detailed in appendices A, B, C and D;
- initiating, in a timely manner, appropriate pay or other administrative actions related to authorized leave and special working arrangements;
- ensuring that human resources advisors provide accurate and timely direction to persons appointed to the core public administration on all matters pertaining to leave with or without pay, including cases where the leave of absence involves political activity or

leave of absence priority entitlements, pursuant to the *Public Service Employment Act* or *Public Service Employment Regulations*; and

- ensuring that requests for permission to seek nomination as or be a candidate in an election and leave of absence (see Appendix B), if applicable, pursuant to the *Public Service Employment Act*, are referred to the Public Service Commission.

6.2 Persons with the delegated authority to approve leave are responsible for:

- seeking advice and direction from human resources advisors in cases of leave without pay due to illness and in any cases where political activity pursuant to the *Public Service Employment Act* is involved;
- ensuring that all applications for discretionary leave and special working arrangements are approved or not approved in a fair, consistent and transparent manner;
- ensuring that requests for leave are only approved in accordance with the applicable authority, in other words, the relevant collective agreement or terms and conditions of employment;
- ensuring that appropriate approval of requests for time off work or to participate in special working arrangements, such as pre-retirement transition leave and leave with income averaging, are considered and, if appropriate, approved in accordance with this directive;
- considering all operational factors before approving leave or special working arrangements;
- directing persons to the appropriate sources of information and, when necessary, to the departmental compensation organization before approving leave or special working arrangements that have an effect on the person's pay or benefits; and
- providing, in a timely manner, the departmental compensation organization with approved applications to process leave without pay or special working arrangements.

6.3 Monitoring and reporting requirements

6.3.1 Within departments

Senior departmental human resources officials or any other person named by the deputy head are responsible for monitoring adherence to this directive within their organization, consistent with Section 6.2 of the *Policy on Terms and Conditions of Employment* by:

- establishing and reviewing on an ongoing basis, processes, procedures and controls to ensure that the management of leave set out in this directive is administered in accordance with the appropriate authorities are timely and accurate and that corrective measures are implemented in a timely manner; and
- reviewing, as required, the organizations' management of cases of leave without pay due to illness (as detailed in appendix B).

6.3.2 By departments

Departments may be required by the Treasury Board Secretariat (TBS) to provide certain types of information considered necessary for assessing compliance and evaluating management practices.

On the basis of monitoring and information provided, the Secretary of the Treasury Board may require additional reports and information from the department.

6.3.3 Government-wide

TBS will review this directive and its effectiveness at the five-year mark of implementation. Where substantiated by risk-analysis, TBS will also ensure an evaluation is conducted.

7. Consequences

7.1 In cases of non-compliance, deputy heads are responsible for taking corrective measures within their organization with those who are identified with delegated authority pertaining to this directive. Corrective measures can range from training, to the suspension or removal of delegated authority to, taking disciplinary action, or any combination of these measures.

7.2 Departments are required to pay any costs associated with errors or inappropriate administration of leave from their existing departmental budgets.

8. Roles and responsibilities of government organizations

8.1 Public Service Commission

In addition to the roles and responsibilities of other government organizations described in Section 8 of the *Policy on Terms and Conditions of Employment*, the Public Service Commission has a specific role with respect to the administration of certain types of leave.

It provides direction to departmental human resources organizations with respect to political activity, leave of absence priority entitlements pursuant to the *Public Service Employment Act* and disabled employee priority entitlements pursuant to the *Public Service Employment Regulations*. The Public Service Commission monitors departmental performance regarding these matters.

9. References

9.1 Other relevant legislation/regulations

- *Public Service Employment Act*
- *Financial Administration Act*
- *Public Service Labour Relations Act*
- *National Defence Act* and related regulations
- *Public Service Superannuation Act*
- *Supplementary Retirement Benefits Act*
- *Income Tax Act*
- *Income Tax Regulations*
- *Canada Elections Act*

9.2 Related policy instruments/publications

- *Values and Ethics Code for the Public Service* , "Chapter 2" Conflict of Interest Measures"

10. Enquiries

Please direct enquiries about this directive to your departmental headquarters. For interpretation of this directive, departmental headquarters should contact:

Sylvie Joseph
Senior Director
Project Management & Internal Service Transformation & Pay Administration
Labour Relations and Compensation Operations
Treasury Board Secretariat
7th Floor, 400 Cooper Street
Ottawa ON K1A 0R5

Email: sylvie.joseph@tbs-sct.gc.ca
Telephone: 613-952-3005
Fax: 613-952-3279

Appendix A-Leave with Pay or Time off Work with Pay

1. Management of leave with pay or time off work with pay

Upon application from persons appointed to the core public administration, persons with the delegated authority may approve leave with pay in accordance with the relevant collective agreement or terms and conditions of employment. Time off work may be granted in accordance with the provisions set out in this Appendix.

1.1 Persons with the delegated authority who approve leave or grant time off work with pay have the right to schedule such absences in a manner that takes into account operational requirements. All absences from work must be authorized by the person with the delegated authority to approve the specific absence.

1.2 A person appointed to the core public administration on an authorized leave of absence can only be replaced on an indeterminate basis if the period of leave or consecutive periods of the same type of leave exceed one year. Periods of different types of leave cannot be combined for the calculation of the one-year period. If the person is replaced, the person with the delegated authority is to make every effort to provide suitable employment for the person following the leave of absence.

Note:

When a person on a leave of absence has been replaced on an indeterminate basis, the departmental human resources advisor is to be consulted by the person with the delegated authority regarding leave of absence priorities pursuant to the *Public Service Employment Act*.

When a person ceases to be an employee pursuant to the *Public Service Employment Act*, there is no entitlement to severance pay. If, however, persons resign or retire before the date on which their employment would have been terminated, they may be eligible to receive severance pay in accordance with the provisions of the relevant collective agreement or terms and conditions of employment.

2. Management of specific leave with pay or time off work with pay situations

2.1 This Appendix establishes criteria that are to be followed when the employer allows for paid leave or paid time off work when such absences are occasioned by legal or societal obligations or are deemed by the employer to be situations when persons appointed to the core public administration should not suffer loss of income. The criteria are as follows:

2.2 Paid time off work

2.2.1 Time off for voting

All persons appointed to the core public administration, including casual workers and terms less than three months, must be given time off with pay to vote (including proxy voting) in federal, provincial, territorial and municipal elections, referenda or plebiscites. The requirements are as follows:

Federal elections, referenda or plebiscites

- Three consecutive hours during the period the polls are open.

Provincial or territorial elections, referenda or plebiscites

- The number of consecutive hours specified in the legislation of the province or territory in which the person resides.

Municipal elections, referenda or plebiscites

- The number of consecutive hours specified in the statutes governing municipal elections, referenda or plebiscites of the province or territory in which the municipality is located; when there is no such provision, the time is that established for elections in the province or territory in which the person resides.

2.2.2 Time off due to adverse climatic or environmental conditions

Persons with the delegated authority exercise their discretionary power to grant time off with pay only if satisfied that the adverse climatic or environmental conditions affect a person's capability to remain on or report for duty.

Adverse environmental conditions at the work place, such as a lack of heat, and emergency conditions affecting the community, such as a serious flood or snowstorm, are examples of conditions that could warrant management to exercise discretion with respect to granting time off with pay.

2.2.3 Time off for personal medical and dental appointments

In the core public administration, it is the practice for the employer to grant paid time off, for up to half a day, for persons to attend their own personal medical and dental appointments without charge to their leave credits in cases of routine, periodic check-ups. When a series of continuing medical or dental appointments are necessary for treatment of a particular condition, persons with the delegated authority ensure that absences are to be charged to the person's sick leave credits.

2.3 Leave with pay

2.3.1 Religious observance

Persons with the delegated authority to approve leave should examine, on an individual basis, each request for leave to meet religious obligations. When approving leave for reasons of religious observance, persons with the delegated authority ensure, whenever operationally feasible, that appropriate arrangements are made for make-up time, such as the use of vacation or compensatory leave, shift exchanges in the case of shift workers, variable hours of work or individual arrangements to make up time.

2.3.2 Recreational, personal and other special reasons

When granting leave for participating in departmental social activities or similar purposes, persons with the delegated authority ensure that leave is to be charged against a person's vacation leave credits. In the event of a relatively brief leave period, such as extended lunch hours, hours of work may be scheduled to maintain the normal overall weekly hours of work.

2.3.3 Participation in international sporting events

A person appointed to the core public administration may be granted by the person with the delegated authority leave with pay for other reasons for the purpose of training for or participating in international sporting events. The leave period must not exceed three calendar months per year, if it is taken in one period, or 66 working days per year if it is taken in broken periods (these amounts include any earned but unused vacation leave credits to which the person is entitled). Training or participation by a person includes involvement as an athlete, an official referee, a judge, a coach or other official.

Leave with pay for other reasons may be granted by the person with the delegated authority under the following conditions:

- a. there must be a recommendation, on behalf of the person, from a national sport-government body and the recommendation for participation must be validated by the appropriate government sport organization, such as Sport Canada; and
- b. the person's unused vacation leave credits must be liquidated before the additional sporting event leave for other reasons is granted.

2.3.4 Serve in the Canadian Forces Reserve

Persons appointed to the core public administration may be granted leave with pay for other reasons for the purpose of serving in the Canadian Forces Reserve. Persons with the delegated authority to approve such leave are encouraged to grant leave of absences for this purpose. Such leave is to conform to the provisions of the *Reserve Forces Training Regulations* made pursuant to the *National Defence Act*.

Appendix B-Leave Without Pay

1. Management of leave without pay

1.1 Upon application from persons appointed to the core public administration, persons with the delegated authority may approve leave without pay in accordance with the relevant collective agreement or terms and conditions of employment.

1.2 Persons with the delegated authority are to ensure that persons appointed to the core public administration who apply for leave without pay for other reasons not covered under the relevant collective agreement or terms and conditions of employment clearly identify, in their application, the reason for the absence, such as to accept employment in the office of a minister, a minister of State, a secretary of State, or member of Parliament or to participate in political activity.

Note:

Heads of human resources must ensure that systems or procedures are in place to track the reason for leave without pay, particularly in cases involving political activity as defined in Part 7 of the *Public Service Employment Act* in order to provide the Public Service Commission with data for monitoring purposes.

1.3 Compensation advisors are to inform persons who have been granted leave without pay of the implications that such leave will have on their pay and benefits, such as various insurance plans, leave entitlements, severance pay entitlements and contributions under the *Public Service Superannuation Act* as well as all entitlements and voluntary deductions.

1.4 With the exception of persons on leave without pay to serve in the Canadian Forces Reserve, identified in Section 2.5. in this Appendix, a person appointed to the core public administration on leave without pay can only be replaced on an indeterminate basis if the period of leave or consecutive periods of the same type of leave exceeds one year. Periods of different types of leave cannot be combined for the calculation of the one year period. If the person is replaced, the person with the delegated authority is to make every effort to provide suitable employment for the person following the leave of absence.

Note:

When a person on a leave of absence has been replaced on an indeterminate basis and the person with the delegated authority is unable to provide suitable employment following the leave of absence, the departmental human resources advisor is to be consulted, by the person with the delegated authority regarding leave of absence priorities pursuant to the *Public Service Employment Act*.

When a person ceases to be an employee pursuant to the *Public Service Employment Act*, there is no entitlement to severance pay. If, however, persons resign or retire before the date on which their employment would have been terminated, they may be eligible to receive severance pay in accordance with the provisions of the relevant collective agreement.

2. Management of Specific Leave without Pay Situations

2.1 This Appendix establishes criteria that are to be followed by departments in the following leave without pay situations:

- illness;
- injury in the workplace;
- to accept employment in the office of a minister, a minister of State, a secretary of State; or a member of Parliament;
- to seek nomination as or be a candidate in a federal, provincial, territorial or municipal election as stipulated under Part 7 of the *Public Service Employment Act*;
- to serve in the Canadian Forces Reserves.

2.2 Illness or injury in the workplace

When a person appointed to the core public administration is unable to work due to illness or injury in the workplace and has exhausted his or her sick leave credits or injury-on-duty leave, the person with the delegated authority is to consider granting leave without pay.

For administrative and benefits purposes only, this type of leave without pay is referred to as sick leave without pay and is recorded as such.

Directive on Leave and Special Working Arrangements

If it is clear that a person will not be able to return to duty within the foreseeable future, the person with the delegated authority is to consider granting such leave without pay for a period sufficient to enable the person to make the necessary personal adjustments and preparations for separation from the core public administration on medical grounds.

When a person with the delegated authority is satisfied that there is a good chance a person will be able to return to duty within a reasonable period of time (the length of which will vary according to the circumstances of the case), leave without pay provides an option to bridge the employment gap. The period of leave without pay is to be flexible enough to allow person with the delegated authority to accommodate the needs of a person with special recovery problems, including retraining.

Persons with the delegated authority are to regularly re-examine all cases of leave without pay due to illness or injury in the workplace to ensure that continuation of leave without pay is warranted by current medical evidence. Such leave without pay situations are to be resolved within two years of the leave commencement date, although each case must be evaluated on the basis of its particular circumstances.

All leave without pay due to illness or injury in the workplace will be terminated by the person's:

- return to duty;
- resignation or retirement on medical grounds;
- cessation of employment pursuant to section 42 of the *Public Service Employment Act*;
or
- termination for reasons other than breaches of discipline pursuant to the *Financial Administration Act*.

2.2.1 Disabled persons-return to work

Persons with the delegated authority are to consult their departmental human resources advisors when persons have been certified by a competent authority as ready to return to work but are no longer able to carry out the duties of their position. Human resources advisors will provide direction with respect to disabled employee priority entitlements pursuant to the *Public Service Employment Regulations*.

2.3 Acceptance of employment in the office of a minister, a minister of State, a secretary of State, or a member of Parliament

Upon request from a person appointed to the core public administration for leave without pay to accept employment in the office of a minister, a minister of State, a secretary of State, or a member of Parliament, the person with the delegated authority may grant leave without pay for other reasons for this purpose with the understanding that all the requirements with respect to leave without pay established in this Appendix are applicable.

2.3.1 Political activity

Persons appointed to the core public administration are to consult their departmental human resources advisors to seek direction regarding the provisions related to political activity in the *Public Service Employment Act* as well as the role of the Public Service Commission.

2.4 Seek nomination as or be a candidate in a federal, provincial, territorial or municipal election

Upon request from a person appointed to the core public administration for leave without pay for other reasons when the reason is to seek nomination as a candidate or to be a candidate in a federal, provincial, territorial or municipal election, the person with the delegated authority is

to forward the request to the departmental human resources senior official, who is to forward the leave request to the Public Service Commission:

If the Public Service Commission grants permission to seek nomination as a candidate or to be a candidate in a federal, provincial, territorial or municipal election, the person appointed to the core public administration may proceed on leave without pay for other reasons. As such, all the requirements with respect to leave without pay established in this Appendix are applicable. The period of leave without pay ends on the day on which the results of the election are officially declared, or on an earlier day, as requested by the person if she or he has ceased to be a candidate.

When a person appointed to the core public administration is declared elected as a member of the House of Commons, the legislature of a province, the Council of the Yukon Territory, the Council of the Northwest Territories or the Legislative Assembly of Nunavut, the person ceases to be an employee pursuant to the *Public Service Employment Act*, and there is no entitlement to severance pay for this type of cessation of employment. If, however, the person resigns or retires before the date on which their employment would have been terminated for this reason, the person may be eligible to receive severance pay in accordance with the provisions of the relevant collective agreement and terms and conditions of employment.

2.5 Serve in the Canadian Forces Reserve

Persons appointed to the core public administration who request leave to serve in Reserve Forces activities, as described in subsection 247.5(1) the *Canada Labour Code* as:

- a. an operation in Canada or abroad - including preparation, training, rest or travel or to the employee's residence - that is designated by the Minister of National Defence;
- b. an activity set out in the regulations;
- c. annual training for the prescribed period, or, if no period is prescribed, for a period of up to 15 days;
- d. training that they are ordered to take under paragraph 33(2)(a) of the *National Defence Act*;
- e. duties that they are called out on service to perform under paragraph 33(2)(b) of the *National Defence Act*;
- f. service in an aid of a civil power for which they are called out under section 275 of the *National Defence Act*

are to be granted leave without pay by persons with the delegated authority and cannot be replaced on an indeterminate basis, even if the absence is for a period exceeding one year. Such leave is to conform to the provisions of the *Reserve Forces Training Regulations* made pursuant to the *National Defence Act*.

Persons on leave without pay for this purpose may only be replaced on a term basis and are to be reinstated in the position that they occupied on the day before the day on which the leave began. If the person with the delegated authority is not able to reinstate the person in that position by reason of a workforce adjustment, the workforce adjustment measures apply.

Appendix C-Pre-Retirement Transition Leave: A Special Working Arrangement

1. Special working arrangement

Pre-retirement transition leave is a special working arrangement whereby eligible persons who are within two years of retirement have their workweek reduced by up to 40 per cent. For a full-time person, this represents up to two out of five working days.

Pay for the participating person would be adjusted to reflect the shorter workweek, but their pension and benefits coverage, as well as premiums and contributions, would continue at the pre-arrangement levels. The person would continue to be subject to the provisions of the relevant collective agreement or terms and conditions of employment and their employment status (full- or part-time) would remain unchanged during the working arrangement.

2. Terms and conditions for approving pre-retirement transition leave

Persons with the delegated authority may approve pre-retirement transition leave if the following conditions have been met:

a. operational requirements:

- a thorough evaluation confirms that, for the two-year work-arrangement period, it is operationally feasible to allow the work arrangement (in other words, the quality of service or costs associated with service delivery would not be adversely affected);

b. the person applying for the work arrangement must:

- be a person appointed to the core public administration;
- have indeterminate employment status;
- not be surplus at the start of the leave arrangement;
- be eligible for an unreduced pension at the start of the leave arrangement or be within two years of becoming eligible for an unreduced pension (that is, 53 years of age with at least 28 years of pensionable service or 58 years old with at least 2 years of pensionable service at the time of retirement) and agree to resign effective at the end of the leave arrangement (the employer's acceptance of the resignation is conditional upon the leave arrangement being completed);
- agree not to work for the federal public service while on leave without pay,
- agree to respect the measures established in Chapter 2, "Conflict of Interest Measures" of the *Values and Ethics Code for the Public Service* while on leave without pay; and
- submit an Application for Pre-retirement Transition Leave Form (TBS 325-9E).

3. Modifying the special working arrangement

Once the pre-retirement transition leave application has been signed by both the participant and the person with the delegated authority, any changes to the arrangement may be made only in rare and unforeseen circumstances. A request, by the person, to change the working arrangement must be provided, in writing with reasonable notice, and may be approved at the discretion of the person with the delegated authority.

4. Cancellation of the special working arrangement

Cancellation of the approved pre-retirement transition leave working arrangement is to be allowed only in exceptional or unforeseen circumstances. A request, by the person, to cancel the working arrangement must be provided in writing, with reasonable notice, and may be approved at the discretion of the person with the delegated authority.

Only in rare and exceptional cases would management initiate cancellation of the pre-retirement transition leave working arrangement.

5. Effect of the special working arrangement on pay and benefits

5.1 Annual rate of pay

The annual rate of pay will be reduced to reflect the number of non-work days during the working arrangement.

Throughout this section the expression *unreduced rate of pay* refers to the annual rate of pay in effect before the commencement of the working arrangement. The term *reduced rate of pay* refers to the annual rate of pay in effect during the pre-retirement transition leave working arrangement.

5.2 Allowances

Allowances for which the person participating in the pre-retirement transition leave working arrangement may be eligible are to be paid in accordance with provisions set out in the relevant collective agreement or terms and conditions of employment.

5.3 Bilingualism bonus

Persons who are eligible to receive the bilingualism bonus will continue to receive it during the pre-retirement transition leave working arrangement for any month in which the person receives a minimum of 10 days' pay.

5.4 Overtime

Overtime worked during the working arrangement period is to be paid at the **unreduced** rate of pay in accordance with the overtime provisions of the relevant collective agreement or terms and conditions of employment.

5.5 Public service pension plan

The non-work days of the working arrangement count as pensionable service under the public service pension plan. The person's contributions to the pension plan will therefore be deducted based on the unreduced pay rate.

Important note:

The *Income Tax Act* places certain maximums on the total amount of leave without pay, exclusive of sick leave without pay, that can be treated as pensionable service under a registered pension plan (including the public service pension plan). Compensation advisors will provide persons appointed to the core public administration with information regarding this exception.

5.6 Supplementary Death Benefit

Directive on Leave and Special Working Arrangements

The premium for Supplementary Death Benefit will be deducted based on the unreduced rate of pay because the benefits are payable based on the unreduced rate of pay.

5.7 Disability or long-term disability insurances

The premium for these insurance plans will be deducted based on the unreduced rate of pay because the coverage is based on the unreduced rate of pay.

5.8 Canada or Québec Pension Plan

Contributions and pensionable earnings to the Canada or Québec pension plans will be based on the person's reduced rate of pay only.

5.9 Employment Insurance

Premiums for Employment Insurance will be based on the reduced rate of pay.

5.10 Union dues

Union dues will be deducted in full from the reduced rate of pay.

5.11 Other voluntary payroll deductions

All other voluntary payroll deductions will continue to be deducted from the reduced rate of pay in the appropriate amounts if there are sufficient funds available.

5.12 Public Service Management Insurance Plan

The premium for this insurance plan will be deducted based on the unreduced rate of pay because the coverage is based on the unreduced rate of pay.

5.13 Vacation and sick leave credits

Vacation and sick leave credits will continue to be earned in accordance with the provisions of the relevant collective agreement or terms and conditions of employment.

Earned vacation and sick leave credits may be used on the at-work days only. Vacation and sick leave may not be granted for the non-work (leave without pay) days.

5.14 Designated paid holidays

Full-time persons participating in the pre-retirement transition leave working arrangement are entitled to designated paid holidays in accordance with the relevant collective agreement or terms and conditions of employment if they are not on leave without pay on both the working day preceding the designated holiday **and** on the working day following the designated holiday.

If the person is entitled to the designated paid holiday and it falls on an at-work day, the person is paid for that day.

If the person is entitled to the designated paid holiday and it falls on a non-work day, the holiday is to be moved to the next day that the person would normally have been paid (in other words, the next at-work day).

5.15 Participation in other special working arrangements

Persons participating in the pre-retirement transition leave working arrangement cannot participate in leave with income averaging.

Appendix D-Leave with Income Averaging: A Special Working Arrangement

1. Special working arrangement

Leave with income averaging is an arrangement whereby eligible persons reduce the number of weeks worked in a specific 12-month period by taking leave without pay for a period of between a minimum of 5 weeks and a maximum of 3 months.

Pay for the participating person would be reduced and averaged out over the 12-month period to reflect the reduced time at work; however, his or her pension and benefits coverage, as well as premiums and contributions, would continue at the pre-arrangement levels.

The person continues to be subject to the provisions of the relevant collective agreement or terms and conditions of employment, and his or her employment status (for example, full- or part-time) would remain unchanged during the working arrangement.

The leave without pay portion of the working arrangement may be taken in two periods within the 12-month period. Each period must be at least 5 weeks and the sum of the two periods must not exceed 3 months.

Although persons participating in the leave with income averaging working arrangement receive income throughout the 12-month period, the person is deemed to be on leave without pay during the non-work period of the arrangement.

2. Terms and conditions for approving leave with income averaging

Persons with the delegated authority may approve leave with income averaging if the following conditions have been met:

a. operational requirements:

- a thorough evaluation confirms that for the 12-month work arrangement period it is operationally feasible to allow this work arrangement (in other words, the quality of service or costs associated with service delivery would not be adversely affected);

b. the persons applying for the work arrangement must:

- be a person appointed to the core public administration;
- have indeterminate employment status;
- not be surplus at the start of the leave arrangement;
- agree not to work for the federal public service while on leave without pay;
- agree to respect the measures established in Chapter 2, "Conflict of Interest Measures," of the *Values and Ethics Code for the Public Service* while on leave without pay; and
- submit an Application for Leave with Income Averaging form (TBS 325-10E).

3. Modifying the special working arrangement

Once the leave with income averaging application has been signed by both the participant and the person with the delegated authority, any changes to the arrangement are to be made only

in rare and unforeseen circumstances. A request, by the person, to change the working arrangement must be provided, in writing, with reasonable notice, and any changes may be approved at the discretion of the person with the delegated authority.

4. Cancellation of the special working arrangement

Because the financial implications are significant in the leave with income averaging working arrangement, only in rare and exceptional cases is the cancellation of the working arrangement to be considered.

A request, by the person, to cancel the working arrangement must be provided in writing with reasonable notice and may be approved at the discretion of the person with the delegated authority.

5. Effect of the special working arrangement on pay and benefits

5.1 Annual rate of pay

The annual rate of pay will be reduced to reflect the period of non-work days that will be taken during the 12-month working arrangement period. The reduced salary rate will be averaged over the 12-month period.

Throughout this section the term *unreduced rate of pay* refers to the annual rate of pay in effect before the commencement of the special working arrangement. The term *reduced rate of pay* refers to the annual rate of pay in effect during the leave with income averaging working arrangement.

5.2 Allowances

Allowances for which the person participating in the leave with income averaging working arrangements may be eligible are to be paid in accordance with the provisions established in the relevant collective agreement.

5.3 Bilingualism bonus

Persons who are eligible to receive the bilingualism bonus will continue to receive the bonus during the leave with income averaging working arrangement for any month in which the person receives a minimum of 10 days' pay. The annual bilingualism bonus rate will be reduced to reflect the period of non-work days that will be taken during the 12-month working arrangement period. The reduced rate of the bilingualism bonus will be averaged over the 12-month period.

5.4 Overtime

Overtime worked during the leave with income averaging working arrangement period is to be paid at the unreduced rate of pay in accordance with the overtime provisions of the relevant collective agreement.

5.5 Public service pension plan

The non-work days (leave without pay) of the leave with income averaging working arrangement count as pensionable service under the public service pension plan. The person's contributions to the pension plan will therefore be deducted based on the unreduced rate of pay.

Important note:

The *Income Tax Act* places certain maximums on the total amount of leave without pay, exclusive of sick leave without pay, that can be treated as pensionable service under a registered pension plan (including the public service pension plan). Compensation advisors will provide persons appointed to the core public administration with information regarding this exception.

5.6 Supplementary Death Benefit

The premium for Supplementary Death Benefit will be deducted based on the unreduced rate of pay because the benefits are payable based on the unreduced rate of pay.

5.7 Disability or long-term disability insurances

The premium for these insurance plans will be deducted based on the unreduced rate of pay because the coverage is based on the unreduced rate of pay.

5.8 Canada or Québec Pension Plan

Contributions and pensionable earnings to the Canada or Québec pension plan will be based on the person's reduced rate of pay only.

5.9 Employment Insurance

Premiums for Employment Insurance will be based on the unreduced pay rate. No deduction will be taken during the period of leave without pay (5 weeks to 3 months)

5.10 Union dues

Union dues will be deducted in full from the reduced rate of pay. Union dues will not, however, be deducted when a person is on the leave without pay portion of the working arrangement for an entire calendar month.

5.11 Other voluntary payroll deductions

All other voluntary payroll deductions will continue to be deducted from the reduced pay rate in the appropriate amounts if there are sufficient funds available.

5.12 Public Service Management Insurance Plan

The premium for this insurance plan will be deducted based on the unreduced rate of pay because the coverage is based on the unreduced rate of pay.

5.13 Vacation and sick leave credits

Vacation and sick leave credits will continue to be earned in accordance with the provisions of the relevant collective agreement or terms and conditions of employment.

Earned vacation and sick leave credits may be used on the at-work days' portion of the working arrangement only. During the leave without pay portion of the working arrangement, vacation and sick leave credits will be earned in accordance with relevant collective agreement or terms and conditions of employment

5.14 Designated paid holidays

Full-time persons participating in the leave with income averaging working arrangement are entitled to designated paid holidays in accordance with the relevant collective agreement or terms and conditions of employment.

5.15 Participation in other special working arrangements

Persons participating in the leave with income averaging working arrangement cannot participate in the pre-retirement transition leave working arrangement.

Claims

Permanent disability and death benefits

Permanent disability benefits

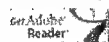
If there is evidence that a work-related injury or disease has permanently disabled you, you will be assessed for permanent disability benefits. The amount will likely be based on the loss of function of your body. If WorkSafeBC determines that the combination of your occupation and disability is so exceptional that the functional award does not appropriately compensate you, then a loss of earnings award may be paid. For more detailed information about disability compensation, see [Chapter Six](#) (PDF 390kb) of the *Rehabilitation Services and Claims Manual*.

WorkSafeBC may provide [vocational rehabilitation](#) to help you overcome the effects of your injury or disease.

If you receive a pension or disability benefits and need to change your banking information or mailing address, complete and submit [Form 19W1](#) or call the Claims Call Centre at 604 231-8888 in the Lower Mainland or toll-free at 1 888 967-5377.

Death benefits

In the case of work-related fatalities, WorkSafeBC pays benefits directly to dependants, and pays toward funeral costs. Our [critical incident response](#) team provides trained mental health workers to assist affected family members and co-workers. For more detailed information about survivor compensation, see [Chapter Eight](#) (PDF 120kb) of the *Rehabilitation Services and Claims Manual*.



To view PDF documents you must have Adobe Acrobat Reader installed on your system. To obtain a copy of the free reader visit the [Adobe](#) web site.

http://www.worksafebc.com/claims/worker_benefits/permanent_disability/default.asp

9/25/2012

WorkSafeBC Claims

Worker benefits

When a worker's claim is accepted, he or she will begin receiving benefits from WorkSafeBC. The type and duration of the benefits depend on the nature of the injury and the work.

- Wage-loss benefits
- Health care benefits
- Permanent disability and death benefits

WorkSafeBC benefits begin immediately:

- The employer is responsible for a worker's wages on the day of injury.
- Wage-loss benefits from the WorkSafeBC start the first scheduled shift lost after the day of a work-related injury or disease.
- Health care costs are covered on the day of injury.

Workers receive wage-loss benefits until the case manager concludes they are able to return to work or have recovered from the injury. If an employer can provide light or modified duties, and it's safe for the worker to do them, they can return to work to those duties.

WorkSafeBC benefits can be suspended if:

- The worker does not attend or does not co-operate in a medical examination or program arranged by WorkSafeBC.
- The worker participates in any activity that might delay recovery.
- The worker refuses treatment recommended by WorkSafeBC.
- The claim is fraudulent.

Learn more about the benefits of your coverage

What do I get for my
WorkSafeBC coverage?



YouTube (6 min 11 sec)

AdobeFlash (5.4 mb)

Tell us what you think of
this video!

http://www.worksafebc.com/claims/worker_benefits/default.asp

9/25/2012

Claims

Wage-loss benefits

Compensation benefits, also known as wage-loss benefits, are based on 90% of a worker's average net earnings. Therefore, WorkSafeBC must determine both the average earnings of a worker as well as the worker's net earnings. Also, there are rules for short-term average net earnings (compensation up to 10 weeks) and special rules for long-term average net earnings.

Step 1 - Determining average earnings

• For permanent full-time and part-time workers

For regularly employed workers, average earnings will normally be based on a worker's average earnings at the time of injury. This amount will be used for the first 10 weeks of a disability. After ten weeks, average earnings will normally be based on the worker's earnings in the 12 month period prior to the injury.

• For casual workers

For casual workers, average earnings will be based on a worker's average earnings earned in the 12 months prior to the injury. This amount will be used for the entire period of disability.

• For self-employed workers who purchased POP (Personal Optional Protection) coverage

For a self-employed worker who has purchased POP, average earnings are based on the amount of POP purchased. This amount will be used for the entire period of disability. View the [POP compensation table](#).

• Apprentices, learners, or new employees employed less than 12 months

For apprentices, learners or new employees employed less than 12 months, average earnings will be based on the time of injury earnings. This amount will be used for the first 10 weeks of a disability. After ten weeks special rules apply. Please speak to the Case Manager who will be able to provide more information.

Step 2 - Determining "net" earnings

• Net deductions for first ten weeks

In determining average net earnings for the first ten weeks of disability, the Board deducts probable Canada Pension Plan contributions, Employment Insurance premiums and federal and provincial income taxes. To determine approximate benefit levels payable for the first 10 weeks of a compensation claim, view the [net compensation table](#). These tables apply to most workers.

• Net deductions after ten weeks

In determining average net earnings after ten weeks, individual aspects of a worker's tax situation are considered. WorkSafeBC must consider the following in determining the worker's probable federal and provincial income tax payable:

- (a) tax credits based on basic personal amounts
- (b) credits for the probable CPP contributions and EI premiums payable for the worker's average earnings
- (c) spousal credit/wholly dependent person credit
- (d) infirm dependant credit.

WorkSafeBC will not deduct probable taxes where the worker is not required to pay income tax. However, they do not completely take into consideration the worker's actual tax status; no other income tax deductions which the worker might have declared for tax purposes may be considered for the purposes of the establishing long-term average net earnings. Also, when applying income tax credits for dependants, it is assumed that the dependants have no income - therefore the full credit is allowed.

Workers exempt from, or ineligible for, EI or CPP would not have these amounts deducted.

View the [weekly wage rate calculator](#).

General information about wage-loss benefits

• Earnings from employers during benefit period

If an individual is working and in receipt of WorkSafeBC benefits (e.g. a return to work program) the WorkSafeBC benefits are reduced according to the amount the worker is receiving for the work. In these cases, the average net earnings are subtracted from the average net

http://www.worksafebc.com/claims/worker_benefits/wage_loss_benefits/default.asp

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earnings from the employment and the balance is then multiplied by 90% to determine the weekly benefit.

- **Maximum earnings**

Gross average earnings are subject to the statutory maximum. If a worker's gross average earnings exceed the maximum, the maximum will be used for the purposes of calculating the average net earnings.

- **Minimum earnings**

Gross average earnings are subject to a statutory minimum. If a worker's gross average earnings fall below that minimum, the worker is entitled to 100% of their average earnings. This means that there would be no net deductions; nor would the 90% compensation factor be applied.

- **If an employer continues to pay a worker's salary**

If an employer continues to pay a worker's full salary while the worker is disabled, the benefit amount is still calculated as described above. However, WorkSafeBC will send the compensation benefits directly to the employer.

- **Net deductions are not submitted to Canada Revenue Agency ("CRA")**

When WorkSafeBC determines "net", there are no actual deductions from the worker's compensation cheque. This is different than the situation where employers deduct taxes and submit those amounts to CRA. WorkSafeBC only uses the net formulas as a way to determine the amount of compensation payable. Therefore, no monies are actually deducted and submitted to CRA.

- **Duration of benefits**

View [Worker benefits](#).

http://www.worksafebc.com/claims/worker_benefits/wage_loss_benefits/default.asp

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Type 1

Recommendation

Documents where there are no identified concerns with their release.



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada

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Policy on the Duty to Accommodate

Policy on the Duty to Accommodate

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Introduction

The Canada Border Services Agency (CBSA) recognizes the importance of a diverse workforce, and values its employees and their individual contributions to the Agency's objectives.

It acknowledges that accommodation is a fundamental aspect of the Canadian Human Rights Act (CHRA) and that, under the *Employment Equity Act* (EEA) certain reasonable accommodations may be required from time to time to achieve a degree of workforce representation of designated groups.

The policy and guidelines aim to ensure that the CBSA's policies and practices are inclusive from the outset and provide a structured process for dealing with accommodation requests with a view to enabling certain individuals to perform their assigned duties to the best of their ability, in a workplace that is responsive to their individual requirements.

Effective Date

The effective date of this policy is June 16, 2011.

Policy Objective

The objective of this policy is to promote a work environment that is inclusive and non-discriminatory, and to ensure a consistent and coordinated approach to accommodation of its employees in accordance with the CHRA.

Policy Statement

CBSA will establish an effective system to ensure an inclusive workplace and the provision of individual workplace accommodation.

CBSA is committed to ensuring that:

- All employees and candidates will be able to contribute their skills and experience to the organization;
- All business activities, including policies, practices, procedures or procurements are non-discriminatory; and that
- employees and candidates are advised about their right to accommodation pursuant to the CHRA.

CBSA will respond in a timely, confidential and effective manner to requests or requirements for individual accommodation in order to ensure full and productive participation in the workplace.

Application

This policy applies to all CBSA employees, persons participating in staffing processes carried out by the Agency and employees covered by the CHRA.

Legal Framework

The policy is intended to address certain of the Agency's responsibilities and obligations stemming from the CHRA and the EEA.

The EEA requires that in implementing employment equity employers make such reasonable accommodations as will ensure that persons in designated groups (women, aboriginal peoples, persons with disabilities and visible minorities) achieve a certain degree of representation in each occupational group in the Agency's workforce.

The CBSA is also committed under the EEA to achieving workforce representation and correcting the conditions of disadvantage in employment experienced by the designated groups (women, aboriginal peoples, persons with disabilities, and visible minorities) by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

The CHRA stipulates that it is a discriminatory practice, directly or indirectly, (a) to refuse to employ or continue to employ any individual, or (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. The prohibited

grounds under the CHRA are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted. The CHRA imposes an obligation on employers to provide reasonable accommodation to employees to the point of undue hardship in respect of prohibited grounds under the Act.

The CHRA also establishes the extent of the duty to accommodate, stating "it is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by the employer to be based on a *bona fide occupational requirement*;"

Definitions

In this policy:

Bona fide occupational requirement BFOR)

A bona fide occupational requirement (BFOR) is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship.

Candidate

Includes applicants from within and from outside the federal public service, as well as existing employees who are participating in a staffing process.

Duty to Accommodate

Refers to the obligation of the employer to take steps to mitigate disadvantage to employees and candidates resulting from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the CHRA. Needs that must be accommodated to the point of undue hardship result from the following grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Employees

Includes full-time, part-time, casual, seasonal (on season), term and indeterminate employees.

Employment and employment-related opportunities

Includes appointments, promotions, secondments, assignments and training and career development opportunities.

Medical Practitioner

A medical professional as recognized by and meeting the licensing requirements under the Public Service Health Care Plan Website

Selection Processes

Includes internal or external advertised or non-advertised selection processes that result in a permanent or temporary appointment or deployment, an assignment, secondment or a training or career development opportunity. Selection processes encompass all related activities such as establishing qualifications, advertising, assessment, giving notice of an appointment recourse, as well as any related communications with candidates.

Undue Hardship

Describes the limit, beyond which organizations are not expected to accommodate.

Section 15 (2) of the CHRA states that "it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost".

Work-related events

Work-related events include conferences, retreats, work-sponsored social events, seminars and information sessions, whether conducted inside or outside the workplace.

Roles and Responsibilities

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.

The Director General, Labour Relations and Compensation Directorate will ensure the proper application and interpretation of this Policy.

Employee or Candidate will:

- ➔ Inform his/her manager/supervisor of his/her accommodation needs;
- ➔ Inform his/her manager/supervisor if their needs change or if the accommodation is no longer sufficient or required, including returning of equipment if no longer needed;
- ➔ Collaborate with his/her manager/supervisor and any other stakeholder to find the most appropriate accommodation to meet his/her needs;
- ➔ Provide supporting documentation (e.g, medical certificate indicating the individual's functional limitations and projected duration) if there are restrictions or the accommodation needs cannot be clearly determined;
- ➔ Accept a reasonable accommodation option when it meets their identified needs;
- ➔ Provide a rationale for not accepting a reasonable offer of accommodation.

Managers/Supervisors will:

- ➔ Consult with the employee/candidate to determine the nature of the accommodation required;
- ➔ Engage in an individualized assessment of the employee's need for accommodation and address each request on a case by case basis;
- ➔ Consult with the Regional Disability and Accommodation Case Coordinator (DACC) where appropriate;
- ➔ Take an active role in exploring and considering options/alternative approaches and solutions to accommodate the employee/candidate;
- ➔ Initiate the accommodation procedure where she or he has knowledge of an employee or candidate's need for accommodation, but is unable for any reason to state that need;
- ➔ Consider all options for meeting accommodation needs, including adaptive technology or devices, modified work stations, quiet space for prayer, altered work schedules, etc.;

- ➔ Where addressing the accommodation request will take some time, consider at an early stage, whether there are interim measures which could be put in place on a temporary basis;
- ➔ Identify when access to the National Job Accommodation Fund may be required;
- ➔ Respect the employee's right to confidentiality and keep information/medical records confidential and ensure that all records are stored in a locked space;
- ➔ The manager is responsible for consulting with the bargaining agent where the employee being accommodated requests that the bargaining agent be consulted, or in situations where there is an impact on other bargaining unit members or on the collective agreement. The manager will do so in addition to consulting with the appropriate HR advisors and, if required, senior management;
- ➔ Grant accommodation requests in a timely manner, up to the point of undue hardship, by providing the employee/candidate with a reasonable offer of accommodation and associated transition plan (if required);
- ➔ Follow up on requests for temporary or permanent accommodation;
- ➔ Monitor the accommodation plan/agreement if the circumstances change or the solution is no longer working;
- ➔ Provide access to training on use of any upgraded or new adaptive technology/equipment;
- ➔ Ensure that work-related events are fully accessible to all participants, up to the point of undue hardship.

The Bargaining Agent is expected to:

- ➔ Facilitate the accommodation needs of their members by supporting the reasonable efforts of the employer to accommodate an employee up to the point of undue hardship;
- ➔ Contribute to the review of corporate policies, procedures, practices, and activities to identify and recommend changes;
- ➔ Foster an environment in which accommodation needs can be communicated;
- ➔ Support, with the agreement of the person requesting accommodation, reasonable measures that result in the least disruption to operations while meeting the needs of the person requesting accommodation subject to undue hardship.

Human Resources:

Labour Relations and Compensation Directorate will:

- ➔ Act as a resource to interpret, advise and consult on the CBSA Policy on the Duty to Accommodate, and related acts, regulations, policies and practices related to accommodation;
- ➔ Consult with the bargaining agents on accommodation issues, as required;
- ➔ Assist management in responding to complaints or grievances related to duty to accommodate issues;
- ➔ Manage the National Job Accommodation Fund.

National Coordinator, Disability and Accommodation Case Management Program will:

- ➡ Lead in the delivery and management of the duty to accommodate program;
- ➡ Consult and collaborate with employee representatives, senior/middle management, supervisors and employees, and with central agencies on the various policy aspects and issues pertaining to accommodation in the workplace;
- ➡ Monitor, evaluate and report on the implementation of the duty to accommodate within CBSA through quarterly status reports prepared by the regional DACCs;
- ➡ Monitor requests for accommodation on an ad hoc basis to ensure the policy and procedures have been correctly applied;
- ➡ Recommend, develop and implement communication plans and education, training and awareness sessions on the duty to accommodate;
- ➡ Monitor quarterly reports for trends, issues and to evaluate the effectiveness of the duty to accommodate program;
- ➡ Review the policy on an annual basis and revise as required.

National Employment Equity & Diversity Program will:

- ➡ Act as a resource to interpret and consult on the requirements of the Employment Equity Act;
- ➡ Promote diversity in employment policies, procedures and practices and assist in human resources planning to help create and maintain a workforce that is inclusive and representative reflecting labour market availability.

Corporate Resourcing will:

- ➡ Promote diversity during the selection process, and ensure that national selection standards and assessment tools do not constitute barriers, and that candidates are provided with appropriate accommodation.

Staffing Advisors will:

- ➡ Consult with specialists from the Personnel Psychology Centre concerning information, guidance and recommendations on assessment accommodation matters for Public Service Commission (PSC) tests, or for guidance on accommodating individuals when using agency tools;
- ➡ Assist in the provision of duty to accommodate measures.

Regional Human Resources Directors will:

- ➡ Ensure that processes and systems are in place to manage the delivery of the duty to accommodate program in their respective regions;
- ➡ Monitor and evaluate the effectiveness of the regional delivery of the duty to accommodate program.

Regional Disability and Accommodation Case Coordinator (DACC) will:

- ➡ Manage and coordinate the regional CBSA duty to accommodate program;
- ➡ Administer and communicate associated duty to accommodate policies, expectations and

practices;

- ⇒ Collaborate with all stakeholders to develop strategies for the retention of employees with accommodation needs;
- ⇒ Coordinate with compensation & benefits professionals within and external to CBSA to synchronize information provision as it relates to duty to accommodate requirements;
- ⇒ Obtain or coordinate evaluations and services including functional job assessments, functional capacity evaluations, ergonomic assessments, etc;
- ⇒ Assist CBSA employees and managers with permanent, temporary and/or transitional work options and reasonable accommodation measures;
- ⇒ Act as a resource for CBSA employees, supervisors and managers to interpret and consult on Federal, Provincial and CBSA regulations, policies, practices and bargaining agent agreements relating to the duty to accommodate in the workplace;
- ⇒ Maintain status reports on the management of duty to accommodate cases in their respective regions;
- ⇒ Keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.

Regional Employment Equity Coordinators will:

- ⇒ Refer duty to accommodate inquiries and cases to the Regional Disability and Accommodation Case Coordinator.

Recourse

If an accommodation request has been denied and the employee or candidate is not satisfied with the response of the manager or selection board, employees and candidates are encouraged to communicate with their manager or selection board. All parties are encouraged to utilize alternative dispute resolution approaches in order to resolve their concerns.

The employee should utilize all internal avenues, i.e. informal complaint, ICMS (informal conflict management system), bargaining agent (if applicable), grievance process, before considering a complaint to the Canadian Human Rights Commission (CHRC). Note that it is the employee's responsibility to consult the relevant collective agreement, terms and conditions of employment or legislation to determine the time limits for seeking recourse.

Monitoring and reporting

Labour Relations and Compensation Directorate will monitor the application of this policy and take any corrective measures required to ensure compliance.

The Regional DACCs will keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.

Access to Information and Confidentiality

All documents relating to specific requests for accommodation will be kept confidential and will

only be disclosed with the consent of the employee or candidate. The CBSA will comply with all requirements of the Privacy Act to protect personal information.

References

Canadian Human Rights Act

Employment Equity Act

Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service

Guide for Assessing Persons with Disabilities – How to determine and implement assessment accommodations, Public Service Commission

A Place for All: A Guide to Creating an Inclusive Workplace, Canadian Human Rights Commission

Note: This policy is available in alternative formats upon request.

Appendices

Process for Duty to Accommodate Requests

Each case must be assessed on a case-by-case basis, which means that each case must be considered individually. Even where an employee does not make a formal request for accommodation, the employer may have an obligation to offer it in certain circumstances.

Managers, Regional DACCs, and employees seeking accommodation are encouraged to work in collaboration and to benefit from available resources, such as any local, regional, or national association dedicated to providing education, accommodation services, disability specific information, or some combination of these (e.g. the Canadian National Institute for the Blind (CNIB), the Canadian Hard of Hearing Association (CHHA)).

1. Employee makes a verbal request for accommodation to his/her supervisor/manager.
2. To facilitate the duty to accommodate process, an employee should make his/her request in writing along with appropriate supporting documentation and additional information to his/her supervisor/manager if he/she:
 - ⇒ Requires long-term, extensive accommodation or changes to the physical work space;
 - ⇒ Requires a flexible work arrangement as part of the accommodation;
 - ⇒ Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.
3. The supervisor/manager should consult with the employee in order to seek any clarification or discuss initial options for a reasonable accommodation.
4. The supervisor/manager reviews the request and consults with the Regional Disability and Accommodation Case Coordinator who may in turn seek advice from other relevant subject matter experts (e.g. assets/accommodation section, Corporate Labour Relations, Uniforms Program, Arming, Resourcing, etc.).
5. Supervisors/managers may also consult with qualified professionals/stakeholders, with the employee's consent, to determine the best accommodation to meet the employee's needs.
6. Review accommodation options available first at level or, if required, at a lower level after all other avenues have been exhausted.
7. Where a supervisor/manager sees that addressing the accommodation request will take some time, he or she should consider at an early stage whether there are interim measures

which could be put in place on a temporary basis.

8. The supervisor/manager should consult with his/her respective manager if the request will affect the operational functioning of the division/branch/region etc.; or could entail an undue hardship including a potentially significant financial implication to the organization. The supervisor/manager should also review the criteria for reimbursement of costs from the National Job Accommodation Fund.
9. If the proposed accommodation measure is satisfactory to the employee, the accommodation will be provided and if necessary, documented with an accommodation plan. The employee and the supervisor/manager will both sign the plan.
10. The manager will provide details in writing to justify a decision where an accommodation has been denied.
11. The supervisor/manager should keep a record of the various accommodations proposed and the reason for accepting or rejecting each option.

Managers will allow employees with specific needs to retain the technical aids, equipment and support materials as long as they are in the federal public service (This means permitting employees to take the equipment with them when they move to another department, agency, branch, division or unit).

Notes:

Medical information should be provided by the employee's medical practitioner, where applicable, and should include a description of the employee's functional limitations and/or restrictions as they relate to their duties as well as whether it is likely to be a permanent or temporary situation. Supervisors and managers cannot request specific information on diagnosis or treatment details.

Where an employee's own medical practitioner is not able to determine the information required on the medical certificate, or clarification of functional limitations is needed, it may be necessary to refer the employee to Health Canada or other expert advisors for an evaluation.

All medical information is confidential; it is to be stored in a locked space and kept separate from the employee's personnel file. Access to this information should be limited and shared only on a need-to-know basis with the consent of the employee.

Although managers (and those providing the accommodation) are authorized to access information pertaining to the functional limitations imposed by an employee's accommodation needs, they are generally not at liberty to know the diagnosis. However, the manager may ask for clarification of the limitations/restrictions should the employee or the medical practitioner not provide sufficient information.

Appendix B

Duty to Accommodate during a Selection Process

1. Managers and Human Resources will ensure that the Standards for selection and assessment do not discriminate on any prohibited ground of discrimination.
2. Regional Human Resources will ensure that candidates are informed of their right to accommodation.
3. Regional Human Resources will inform candidates in a timely manner of the evaluation tools

that will be used, in order that the candidates may identify a need, where applicable.

4. Regional Human Resources will ensure that all employment opportunities are available in an accessible format.
5. Regional Human Resources and hiring managers will ensure that the assessment methods or tools used in the staffing process, including tests and interviews, accurately assess the qualifications required, do not constitute a rule, practice or physical barrier that has, or may have, an impact on individuals or groups protected under the CHRA, or on designated group under the EEA, and that they assess candidates fairly.
6. Once the candidate requests an accommodation, Management and Regional Human Resources will consult with the candidate to identify the nature of the accommodation and, if necessary, consult appropriate health care professionals and others with the candidate's consent, to determine the appropriate accommodation for that person.
7. Managers and Human Resources (HQ and Regions) may consult and collaborate with bargaining agents or other employee representatives where an employee being accommodated requests that a bargaining agent or other employee representative be consulted, when required.
8. All parties will respect the candidate's right to privacy and confidentiality and accommodate up to the point of undue hardship.

Appendix C

Procedure for Accessing the National Job Accommodation Fund

The National Job Accommodation Fund

The Canada Border Services Agency (CBSA) National Job Accommodation Fund has been established to cover certain costs of the duty to accommodate for CBSA employees. Only duty to accommodate costs of \$500.00 or more are covered by the fund.

Criteria

Note: Standard office equipment/furniture such as ergonomic chairs, 17 inch monitors, and standard height adjustable workstations are not covered by the fund.

Examples of eligible costs

This list is not exhaustive; there may be other eligible costs based on the employee's individual circumstances. Please consult with your Regional DACC.

- ⇒ Adaptive Technology (hardware and software)
- ⇒ Custom furniture, equipment
- ⇒ Interpreters for deaf and hearing-impaired employees
- ⇒ Sign language training for co-workers
- ⇒ Alternate formats for printed material (Braille, large print documents)

Submitting a request

Employees

Upon advising your manager of your accommodation needs that may incur certain expenses, complete a Request to Access the National Job Accommodation Fund (NJAF) form and submit it to your manager along with any required supporting documentation.

Managers

Review the information on the NJAF form and request clarification/additional information/documents, if necessary. Submit completed Accommodation Forms and supporting documentation to your Regional DACC for processing by Labour Relations and Compensation Directorate or if there is no local coordinator in your area, please submit the request directly to:

National Coordinator, Disability and Accommodation
Case Management Program
Labour Relations and Compensation Directorate
99 Metcalfe Street, 3rd Floor
Ottawa, ON K1A 0L8

Approval Process

1. The National Coordinator, Disability and Accommodation Case Management Program will review the request and, based on the information provided, will approve it, reject it, or notify the Regional DACC or manager that additional information is required before a decision can be reached.
2. Upon approval, the manager will be granted authority to charge applicable costs to a specified financial code that will be provided at the time of approval. If the cost has already been incurred, the amount will be reimbursed to the manager's budget.

Appendix D

Questions and Answers

What does Bona Fide Occupational Requirement (BFOR) mean?

A BFOR is a requirement of the job that is adopted in good faith and which is reasonably necessary for the accomplishment of a legitimate work-related purpose. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship. For example, an airline may require its pilots to have a certain level of uncorrected vision, hearing, and manual dexterity in order to land a plane with all its passengers, safely, without instruments in an emergency. Although this requirement could prevent persons with certain disabilities from being a pilot, this standard is essential to carrying out the duties of a pilot's job.

What does undue hardship mean?

Undue hardship describes the limit, beyond which organizations are not expected to accommodate. Section 15(2) of the CHRA states that "it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and costs."

Who is responsible for requesting accommodation?

The responsibility for requesting accommodation rests with the person requiring accommodation. Although the accommodation solution shall remain a decision mutually agreeable to all parties involved, the person requiring accommodation should also explain the sorts of accommodation he or she considers appropriate, which will be supported by medical professionals where necessary.

The duty to accommodate process is a shared responsibility between the employer, employee and bargaining agent. Where an employer has initiated a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate, the person requiring accommodation has a duty to facilitate the implementation of the proposal.

If an employee does not acknowledge a need for accommodation and a manager suspects the employee is suffering from some addiction or condition that is impacting the workplace or the employee's work performance, the manager should make inquiries, inform the employee that there are services to help (e.g. EAP) and offer to accommodate the employee. The types of behaviours could include persistent lateness, change in behaviour that is causing problems with co-workers or managers, missed meetings or deadlines, etc. It is recommended the manager keep a record of all meetings with an employee who denies the need for accommodation (it is advised that this record be shared with the employee for understanding, clarification and acceptance of what has transpired during the meeting). Should the employee's health issue be such that it affects the employee's ability to perform his/her duties and/or poses a health and safety risk, the manager should contact his/her Regional Labour Relations Advisor for further guidance.

Managers should also ask if any accommodation is needed when an employee is returning to work after a lengthy absence, even if the employee hasn't requested it.

How do employees/candidates request accommodation?

An employee may request an accommodation by speaking with their supervisor/manager and/or completing the request for accommodation form (see Appendix A: "Process for duty to Accommodate Requests"). The supervisor/manager reviews the request and consults with appropriate advisors (e.g. regional human resources advisors, assets/accommodation section, Disability & Accommodation Case Coordinator). If the accommodation request is denied, the reasons should be clearly communicated by the supervisor/ manager (in writing) to the employee.

An employee should make his/her request in writing to their manager if he/she:

- ➔ Requires long-term, extensive accommodation or changes to the physical work space;
- ➔ Requires a flexible work arrangement as part of the accommodation;
- ➔ Is a person with a disability and requires any form of accommodation (see the Treasury Board Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service);
- ➔ Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.

Candidates in a selection process must request accommodation by informing the staffing advisor, assessment board member or hiring manager of their accommodation need. Candidates should request accommodation for each stage of assessment where accommodation is needed.

Are Employees entitled to accommodation for needs other than disability?

Yes. Accommodation may also be appropriate on the basis of other grounds including religion,

marital or family status

For example, employees' religious beliefs may require them to be absent from work on days of religious observances, to have prayer breaks during working hours, to observe a certain dress code, or to follow a certain dietary plan. In order to accommodate employees who request time off for religious obligations, managers should consider a number of flexible working arrangements.

Other employees may require accommodation based on marital or family status. Employers have the same responsibility to accommodate an employee's family status including family responsibilities, such as:

- ➔ Allowing for leave without pay for the care of family;
- ➔ Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- ➔ Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- ➔ Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- ➔ Providing suitable options to allow breast feeding as required.

Additional information is available from the Canadian Human Rights Commission website or by contacting regional DACCs.

All examples of accommodation related to leave should be reviewed in accordance with the collective agreement.

What are some examples of possible accommodations?

The duty to accommodate is often identified with the removal of physical barriers or the provision of technical devices within the workplace. However, changes to existing policy and procedure can also create the need for accommodation. An accommodation measure may be as simple as adaptive technology, modifying the work, or exchanging job tasks with other employees.

Examples of accommodation measures include, but are not limited to, the following:

- ➔ Adaptive technology;
- ➔ Providing work space and furnishings appropriate to the nature of the disability;
- ➔ Flexible work arrangements;
- ➔ Providing interpreters for deaf and hearing-impaired employees;
- ➔ Converting printed matter to alternative media and reader services for employees who are visually impaired;
- ➔ Changes to work sites;
- ➔ Attendant services;
- ➔ Provision of alternate formats (e.g. Braille, large print documents, etc.);
- ➔ Bundling duties;
- ➔ Additional time to write a test.

Note: These examples may not be applicable in all cases, and individual accommodations will be determined based on the needs of the employee as well as operational requirements. Reasonable accommodation will be provided to the point of undue hardship.

Appendix E

Duty to Accommodate on the Basis of Family Status

Definition:

Family status is one of the prohibited grounds of discrimination covered by the Canadian Human Rights Act. The Canadian Human Rights Commission defines "Family Status" as follows:

"Family status" refers to the inter-relationship that arises from bonds of marriage, consanguinity or legal adoption, including of course, the ancestral relationship, whether legitimate, illegitimate, or by adoption, as well as the relationships between spouses, siblings, in-laws, uncles or aunts, and nephews or nieces, cousins, etc.

Discrimination related to the fact that spouses work together for the same employer may be considered under the grounds of both marital status and family status."

As set out in the remainder of this appendix, in the context of family status, accommodation can be associated with caregiving needs.

Needs related to caregiving:

An individual's caregiving needs will vary over the course of a lifetime. The nature of the needs associated with caring for children will be, for example, significantly different from the nature of the needs associated with caring for an aging parent. Some needs will remain stable over lengthy periods of time, while others may be short term or temporary.

Not every circumstance related to caregiving will give rise to a duty to accommodate. Where rules, requirements, standards or factors have the effect of disadvantaging persons who have substantial caregiving responsibilities related to their family status, either by imposing burdens that are not placed on others or withholding or limiting access to opportunity, benefits or advantages available to others, a duty to accommodate caregiving needs related to family status may arise.

Assessment of accommodation requests based on caregiving needs:

Each request must be reviewed on an individual basis and assessed on its own particular facts. Managers, supervisors and all those involved in the accommodation process should follow the steps outlined in "Appendix A Process for Duty to Accommodate Requests" of this policy.

When assessing requests based on caregiving needs, supervisors and managers should consider the both the nature of the caregiving responsibility and the conflict between that responsibility and the organization's rules, requirements, standards, processes or other factors, on a case-by case basis.

The more substantial the caregiving obligation at stake, the more likely it is that a duty to accommodate will arise.

Roles and responsibilities:

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement reasonable accommodation solutions.

Employer's obligation:

Employers have the same responsibility to accommodate an employee's family status as they do for other protected characteristics, such as disability or religion. This means that employers must accommodate employees who experience adverse differentiation as a result of workplace standards, policies or practices because of their family status.

As with other prohibited grounds of discrimination, CBSA must accommodate an employee's family status accommodation request up to the point of undue hardship.

Employee's obligation

The person seeking accommodation has a responsibility to inform his or her manager of their accommodation needs based on family status and that there is a conflict between those needs and the organization's rules, requirements, standards, processes or procedures.

An individual seeking accommodation for family obligations must demonstrate that he or she has made real and diligent efforts to deal with the conflict between work and family obligations. For example, persons seeking accommodation based on caregiving needs may be expected to make reasonable efforts to first explore and avail themselves of outside resources available to them, such as daycare and community services, and/or to explore other options available to them, such as seeking the assistance of family members, prior to submitting an accommodation request to their supervisor or manager, except in emergency situations.

Examples of accommodation on the basis of family status:

Most family status accommodation is a matter of flexibility. It may be made available on a one-time basis, or on a temporary or ongoing basis, depending on the circumstances.

As previously stated, each case must be assessed on an individual basis. Depending on the particular accommodation needs, the following options could be considered:

- Allowing for leave without pay for the care of family;
- Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- Providing suitable options to allow breast feeding as required.

When considering suitable leave options, it should be noted that managers and supervisors do not have to provide paid leave to employees who need to be away from the workplace during regular working hours unless there are suitable provisions to that effect in the relevant collective agreement or terms and conditions of employment.

Inflexible, excessive, or unpredictable work hours may pose barriers to persons with caregiving responsibilities. For example, given that many daycares operate from 8:00 a.m. to 6:00 p.m., some employees with small children may find it difficult to comply with a work schedule that requires them to start precisely at 8:00 a.m. Of course, there will be circumstances where the nature of the work demands specific start, finish and break times. Where such timetables are not a bona fide occupational requirement, supervisors and managers should consider adjusting hours of work to accommodate their employees' needs.


Where social supports for childcare, eldercare or for persons with disabilities are limited, employees with substantial caregiving responsibilities may require accommodations to shift scheduling.


For example, in situations where two parents with caregiving responsibilities work shifts, the following measures could be considered:

- Arranging shift schedules so the parents do not have overlapping shifts;
- Offering an assignment to an area that does not require shift work;
- Adjusting hours of work to coincide with hours where caregiving is available;
- Agreeing to an employee's request for part-time work.


In a situation where an employee working shifts also has a spouse working shifts elsewhere, supervisors and managers should make enquiries as to the elements of the spouse's work that are relevant to the employee's need for accommodation.


Note: The material in this appendix has been copied and/or adapted from material found on the Canadian Human Rights Commission's and the Ontario Human Rights Commission's websites

 [Accommodation Request June 16 2011 \(PDF, 36.6 ko\)](#)

 [DTA Policy \(PDF, 309 ko\)](#)

 [Accommodation Agreement June 16 2011 \(PDF, 52.9 ko\)](#)

 [Family Status Information Form June 17 2011 \(PDF, 32.7 ko\)](#)

 [Request to Access the National Job Accommodation Fund June 16 2011 \(PDF, 39.1 ko\)](#)

Date Modified: 2011-06-25

Government
of Canada Gouvernement
du Canada

Canada

Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service

Preamble

The Treasury Board and the Public Service Commission are committed to developing an inclusive, barrier-free work environment in which all persons have equal access to opportunities in the federal Public Service, appointments are based on merit and all employees feel included and valued. This policy outlines the principal steps necessary to attain the goal of a representative Public Service that includes persons with disabilities.

This policy is consistent with fundamental Canadian legal principles. The Canadian Charter of Rights and Freedoms guarantees certain democratic rights to all persons and prohibits discrimination on the basis of physical or mental disability. In several cases, Canadian courts have emphasized that accommodation is an essential means of ensuring the equal participation of all persons in all sectors of Canadian society.

Under the Canadian Human Rights Act, employers must accommodate individuals and groups of individuals to the point of undue hardship considering issues of health, safety and cost.

The Employment Equity Act requires the reasonable accommodation of persons with disabilities and others within the federal workplace. The Act also requires employers to identify and remove barriers to the employment of persons in designated groups.

Under the Employment Equity Act, the Treasury Board and the Public Service Commission share employer responsibilities to the extent of their authority under the Financial Administration Act and the Public Service Employment Act. This policy therefore sets out the requirements for the Treasury Board, the Public Service Commission and their delegates.

Annex A provides guidelines to help in the interpretation of this policy. These guidelines may be updated periodically based on experience in applying the policy.

Effective date

This policy becomes effective June 3, 2002. It replaces the Treasury Board Policy on the Provision of Accommodation to Employees with Disabilities dated July 1, 1999.

Policy objectives

This policy's goal is to ensure the full participation of persons with disabilities in the federal Public Service whether as candidates for employment or as employees.

Policy statement

It is the policy of the Treasury Board and the Public Service Commission to create and maintain an inclusive, barrier-free environment in the federal Public Service to ensure the full participation of persons with disabilities. This policy is to be implemented by:

- identifying and removing barriers to employment, career development and promotion of persons with disabilities unless doing so would result in undue hardship
- designing all employment systems, processes and facilities to be accessible by building accommodation into workplace standards, systems, processes and facilities and
- accommodating individuals when such barriers cannot be removed. Such accommodation must be made to the point of undue hardship taking into consideration issues of health, safety and cost. Accommodation must also be based on the circumstances of each case and must respect an individual's right to privacy and confidentiality.

Application

This policy applies:

- a. with respect to accommodation within the workplace, to all departments and agencies and other portions of the Public Service listed in Part 1 of Schedule 1 of the Public Service Staff Relations Act for whom the Treasury Board is the employer and
- b. with respect to accommodation during staffing processes, to all departments and agencies and other portions of the Public Service for which the Public Service Commission has exclusive authority to appoint persons.

Definitions

In this policy:

Accommodation/accommodate (adaptation/adapter) -- refers to the design and adaptation of the work environment to the needs of as many types of persons as possible and, according to the Supreme Court of Canada, refers to what is required in the circumstances of each case to avoid discrimination. Several examples of accommodation are listed in the guidelines attached to this policy.

Adaptive technology (technologie d'adaptation) -- consists of work-related devices or equipment that allow employees with disabilities to participate as fully as possible in the workplace and include items such as magnification software and hardware, voice recognition software and augmentative communication devices.

Attendant services (services auxiliaires) -- refers to the provision of services to persons with disabilities who require assistance with the duties of their position, as well as assistance with activities of everyday living during the employees' hours of work.

Barriers (obstacles) -- are physical barriers as well as formal or informal policies and practices that restrict or exclude persons in the designated groups from employment opportunities in the federal Public Service.

Bona fide occupational requirements (exigences professionnelles justifiées) -- according to the Supreme Court of Canada, are those requirements that:

- the employer has adopted for a purpose or goal that is rationally connected to the functions of the position,

- the employer has adopted in good faith, in the belief that they are necessary to fulfil the purpose or goal and
- are reasonably necessary to accomplish the purpose or goal in the sense that the employer cannot accommodate persons with the characteristics of a particular group without incurring undue hardship.

More information on the application of this definition is contained in the Guidelines attached to this policy.

Candidates (candidats) -- includes applicants from outside the federal Public Service, as well as existing employees who are participating in a staffing process.

Employees (employés) -- includes full-time, part-time, casual, seasonal, term and indeterminate employees.

Employment and employment-related opportunities (chances d'emploi et les possibilités liées à l'emploi) -- includes appointments, promotions, deployments, secondments, assignments, training and career development opportunities.

Facilities (installations) -- includes premises and equipment.

Flexible work arrangements (modalités de travail flexibles) -- include but are not limited to telework and compressed work weeks.

Persons with disabilities (personnes handicapées) -- as defined by the Employment Equity Act, are persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:

- consider themselves disadvantaged in employment by reason of that impairment or
- believe that an employer or potential employer likely would consider them disadvantaged in employment by reason of that impairment.

These would include persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

For the purpose of this policy, persons with disabilities do not have to fall strictly within this definition. Examples of types of disabilities that may require accommodation are listed in the attached Guidelines.

Staffing and selection processes (processus de dotation et de sélection) -- include open, closed or without competition staffing actions that result in a permanent or temporary appointment or deployment. Staffing and selection processes encompass all related activities such as establishing qualifications, advertising, assessment, giving notice that an appointment or deployment has been made, recourse and disclosure, as well as any related communications with candidates.

Systems (systèmes) -- includes information systems and employment systems (such as policies, practices, directives and guidelines).

Work-related events (activités liées au travail) -- includes meetings, training programs, conferences, retreats, seminars, social events and information sessions, whether conducted inside or outside the workplace.

Policy requirements

The Public Service Commission and/or its delegates will:

- ensure that Standards for Selection and Assessment do not discriminate on any prohibited ground of discrimination, including disability, unless the requirement is a bona fide occupational requirement,
- ensure that all employment opportunities are advertised in an accessible format,
- ensure that assessment methods or tools used in the staffing process, including tests and interviews, accurately assess the qualifications required, do not constitute barriers and assess candidates fairly,
- ensure that the second language evaluations and language training programs do not contain barriers,
- inform all candidates of this policy and the procedure for obtaining accommodation during the staffing process,
- inform all candidates, in a timely fashion, of the type or nature of tests or other evaluation methods that will be used in the selection process to allow the candidates to make an informed request for appropriate accommodation,
- if necessary, consult appropriate health care professionals and others, with the candidate's consent, to determine the accommodation appropriate to that person,
- respect candidates' right to privacy and confidentiality, and
- accommodate individual candidates with disabilities up to the point of undue hardship.

Candidates in a selection process must:

- inform the Public Service Commission or departmental staffing representative of any accommodation required in a timely fashion so that appropriate accommodation can be arranged and
- collaborate with departmental representatives in finding the most appropriate accommodation.

The Treasury Board Secretariat will:

- inform all departments of this policy,
- provide interpretation and guidance to departments with respect to the requirements of this policy, and
- undertake a comprehensive review of the provisions and operation of this policy within five years of its coming into effect.

Deputy heads are responsible for the implementation of this policy within their departments. They and their delegates must:

- create and maintain an inclusive, barrier-free work environment that is accessible,
- inform all employees of this policy and the procedure for obtaining accommodation,
- ensure that employment opportunities are advertised in an accessible format,
- ensure that all managers within the department abide by this policy,
- make available the resources necessary for implementing this policy,
- examine all systems to identify any barriers to employees with disabilities, and remove those barriers,
- when barriers cannot be removed, accommodate individual employees with disabilities up to the point of undue hardship,

- consult employees with disabilities, including employees with learning disabilities, with respect to:
 - any design, changes or upgrades to physical structures, new or existing systems or equipment so that the workplace is accessible to employees with disabilities, and
 - the planning and design of work-related events and conferences so that all events and opportunities are accessible to employees with disabilities,
- provide training to employees with disabilities on the use of any new or upgraded equipment or systems,
- ensure that employees with disabilities are provided with information in a timely fashion and a usable format,
- after general barriers have been removed and general accommodation measures have been put in place, proceed with individual accommodation requests of persons with disabilities by:
 - consulting with the employee to identify the nature of the accommodation,
 - if necessary, consulting appropriate medical and rehabilitation advisors and others, with the employee's consent, to determine the accommodation appropriate to that person and
 - accommodating the employee,
- consult and collaborate with bargaining agents or other employee representatives where accommodation affects other employees or where the employee being accommodated requests that the bargaining agents or other employee representatives be consulted,
- provide and pay for technical aids, equipment and services for employees with disabilities as well as repairs to such aids and equipment,
- respect individuals' right to privacy and confidentiality and
- allow employees with disabilities to retain technical aids, equipment and support materials should they move to another position within the federal Public Service and accommodation is still required.

Employees must:

- inform their supervisors of their employment-related needs,
- collaborate with the department or its representatives in finding the most appropriate means to accommodate their employment-related needs, and
- notify the department when attendant or other services, technical aids or equipment are no longer needed, and return the equipment.

Monitoring

The Treasury Board Secretariat will assess and evaluate the effectiveness and implementation of this policy in accordance with the Policy on Active Monitoring.

The Public Service Commission will also monitor the application of this policy as part of its overall active monitoring of the federal Public Service staffing system.

Departments and agencies will provide early notice to the Treasury Board Secretariat and/or the Public Service Commission of significant issues arising from the implementation of this policy.

References

Access to Information Act
Canada Labour Code, Part II
Canadian Charter of Rights and Freedoms
Canadian Human Rights Act
Employment Equity Act and Regulations
Financial Administration Act
Official Languages Act
Privacy Act
Public Service Employment Act and Regulations
Public Service Staff Relations Act
Communications Policy
Disability Insurance Plan for Public Service Employees
Personnel Psychology Centre Guidelines for Assessment of Persons with Disabilities
Policy on Alternate Formats
Policy on Language Training
Policy on the Disposal of Surplus Moveable Crown Assets
Policy on the Staffing of Bilingual Positions
Public Service Commission's Standards for Selection and Assessment
Public Service Management Insurance Plan (Long-Term Disability)
Real Property Accessibility Policy

Enquiries

Enquiries should be directed to human resource or employment equity personnel in your department or agency. They may review questions of policy interpretation or clarification with the Employment Equity Division of the Treasury Board of Canada Secretariat or with the Public Service Commission.

Information may also be obtained from the Treasury Board Secretariat Employment Equity Division's Web site at the following address: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12543> or from the PSC Web site at <http://www.psc-cfp.gc.ca>

Annex A - Guidelines

These guidelines are not intended to be exhaustive, but offer some suggestions on how to interpret and implement this policy.

As stated in the preamble, the Treasury Board and the Public Service Commission are committed to an inclusive and barrier-free work environment in which all persons have equal access to opportunities in the federal Public Service and appointments are based on merit. Creating such a work environment requires that differences are accommodated before the merit assessment is undertaken and that assessment and evaluation tools are inclusive and barrier-free.

According to the Supreme Court of Canada, barriers to participation for persons with disabilities must be eliminated from policies, rules, standards and practices at the design stage. Employers cannot rely on accommodating individuals after the fact but must build accommodation into their policies or practices, as far as possible, to the point of undue hardship. If provision for accommodation has not been incorporated into the policy or standard then the policy or standard is not a bona fide occupational requirement.

The corporate culture of a department or agency can ensure that persons with disabilities feel welcome in that environment. Training should be made available to managers and others, such as selection board members, on the duty to accommodate.

The accommodation process should be as uncomplicated as possible and should respect the dignity and privacy of the person being accommodated. This can be accomplished if, at the time any person applies for a position, he or she is asked whether or not accommodation is required. The inquiry should be made again at the time of appointment or at the beginning of any other staffing process.

Under certain circumstances, employers may be required to offer accommodation to an employee even though the employee has not requested accommodation. Such situations should be handled with the utmost consideration for the privacy and dignity of the employee and managers may wish to obtain confidential, expert advice from within their departments or from the Treasury Board Secretariat or the Public Service Commission before proceeding.

A request for accommodation need not be in writing, but should be communicated as clearly and specifically as possible. The person to whom the request has been directed should do the following.

1. Determine the type of accommodation required, based on information provided by the candidate or employee.
2. If the candidate or employee does not know what type of accommodation is required, consult experts in the field to determine the appropriate accommodation. This could include the person's own physician, psychologist or centres of expertise within the Public Service Commission or the accommodating department.
3. Provide the accommodation based on the request of the person being accommodated, or, if necessary, on the advice of experts.

Persons requesting accommodation may be asked to provide documentation from a qualified health care professional to clarify the limitations caused by the disability and/or the type of accommodation that would be most effective. Any medical records provided should be kept strictly confidential and separate from personnel files. Requests for this type of information should come from personnel designated to deal with accommodation requests and trained to handle potentially sensitive medical information.

Departments and agencies are expected to integrate into their budgets and financial planning exercises the resources necessary to accommodate their employees. When considering cost, it should be kept in mind that in many cases the cost will be amortized over the employee's entire career. Also, there are many payment options available, include leasing, for any necessary equipment.

Departments and agencies should develop their own internal procedures for dealing with accommodation requests, including mechanisms for resolving situations where accommodation is denied. All candidates and employees should be advised of such procedures.

Persons who are denied accommodation may also wish to use the recourse mechanisms set out in the Public Service Employment Act, or contact the Canadian Human Rights Commission.

To implement employment equity, the federal Public Service encourages and promotes members of designated groups to identify themselves. However, an employee does not have to self-identify as a person with a disability in order to be accommodated or to have accommodation offered to him or her. The self-identification process is voluntary and the information obtained from it is confidential. No one can be forced to self-identify to receive accommodation or after he or she has been accommodated.

Although this policy applies only to employees of, and candidates for positions in, the federal Public Service, managers and others are expected to abide by the spirit of the policy when dealing with other persons who work for the federal Public Service, such as students and locally engaged staff.

Examples of Disabilities

Determining what is a disability depends on the circumstances of each case. The following have been found to be disabilities:

- blindness or other severe visual impairment
- deafness or other severe hearing impairment
- mobility impairment
- chronic pain
- environmental sensitivities
- addictions
- learning disabilities
- speech impairment
- chronic conditions, such as diabetes
- psychiatric disabilities
- developmental disabilities
- other permanent or temporary conditions that cause pain or limit or restrict activities

Examples of Accommodation

During the selection process, a person's qualifications must be assessed after the person has been accommodated. Types of accommodation during the selection process may include, but are not limited to:

- providing information about the position in multiple formats for candidates who are blind or visually impaired,
- ensuring that applicants who are deaf or hearing impaired can make inquiries via a TTY number or fax,
- allowing extra time, where appropriate, for tests or exams and
- ensuring that the interview site is physically accessible.

Types of accommodation in the workplace may include, but are not limited to:

- attendant services,
- adaptive technology,
- changes to work sites,
- flexible work arrangements, including but not limited to telework, task modifications or other alternative work arrangements,
- converting printed matter to alternative media and reader services for employees who are blind,
- providing work space and furnishings appropriate to the nature of the disability,
- providing interpreters for deaf and hearing-impaired employees and
- adapting training programs to the needs of employees with disabilities, including those with learning disabilities.

Alternate formats can include:

- braille documents
- large print documents
- electronic versions of documents

Other Matters

Attendant and other services

The contracting department should refer to the standard clauses established by Public Works and Government Services Canada for inclusion in contracts for attendant and other services.

Travel status

When employees with disabilities are on travel status and suitable attendant services cannot be provided, or the services of a travel companion are required, a separate contract may be necessary and the service shall be provided at the department's expense.

Parking requirements

Departments and agencies are responsible for setting parking rates for government-owned or leased parking lots. Departments should determine whether it is appropriate to charge parking fees to employees with a disability who are unable to use public transit, and, if so, what those fees should be.

Guidelines for Termination or Demotion for Unsatisfactory Performance; Termination or Demotion for Reasons Other than Breaches of Discipline or Misconduct; and Termination of Employment During Probation

1. Context

These guidelines replace the following Guidelines issued on April 1, 2005:

- *Guidelines for Demotion/Termination of Employment for Unsatisfactory Performance*
- *Guidelines for Termination of Employment and Demotion for Reasons other than discipline (Medical Incapacity)*
- *Guidelines for Rejection on Probation*

These guidelines support the principles set out in the *Policy Framework for People Management* by providing advice that will foster sound people management practices across the core public administration.

Unsatisfactory Performance: Paragraph 12(1)(d) of the *Financial Administration Act (FAA)* authorizes every deputy head in the core public administration to terminate employment of or demote an employee whose performance is, in the opinion of the deputy head, unsatisfactory. Subsection 12.2(1) permits delegation of this authority.

Other Reasons: Paragraph 12(1)(e) of the *FAA* authorizes every deputy head in the core public administration to terminate employment of or demote an employee for reasons other than breaches of discipline or misconduct. Such actions must be for cause in compliance with subsection 12(3) of the *FAA*. Subsection 12.2(1) permits delegation of these authorities.

During Probation: Subsection 61(1) of the *Public Service Employment Act (PSEA)* authorizes the Treasury Board to establish, by regulation, the probationary period for classes of employees who are appointed from outside the public service. Subsection 62(1) of the *PSEA* provides deputy heads with the authority to terminate employment during the probationary period established by regulation of the Treasury Board. Subsection 24(1) of the *PSEA* permits delegation of this authority.

2. Target Audience and Purpose

These guidelines assist human resources advisors in the core public administration in their role of providing advice and guidance to management in situations such as the following:

- The employee's performance is unsatisfactory and action to demote the employee or terminate his or her employment is being considered;
- Action to demote an employee or terminate employment for reasons other than breaches of discipline or misconduct is being considered. Demotion or termination for medical incapacity is the most common action. Demotion or termination for other reasons can also include failure to meet the basic requirements of the position (e.g., a valid driver's licence), abandonment of position, and failure to meet the security requirements of the position; and

- Termination of employment during probation is being considered.

3. General

Upon request, the Treasury Board Secretariat's (TBS's) Employer Representation in Recourse Team is available to provide advice and guidance on demotion or termination of employment.

It is recommended that measures taken to act in a manner consistent with the following principles are a matter of record.

- a. In making a decision to terminate employment of or to demote an employee whose performance is unsatisfactory, the following guiding principles are key:
 - The required level of job performance is determined;
 - The level of performance required is communicated to the employee;
 - Reasonable levels of supervision and instruction are provided to the employee;
 - The employee is allowed a reasonable period of time to meet the required level of job performance;
 - The employee is provided with reasonable warnings about the consequences of his or her continued failure to meet the required level of job performance; and
 - Once the inability to meet the required level of job performance has been established, reasonable alternative employment within the competence of the employee is considered.

Please be mindful that jurisprudence has established that the delegated manager is to notify the employee in writing when a decision is made to demote him or her or to terminate his or her employment. The notification is to state the reasons for the decision and the effective date, and is to inform the employee that he or she has the right to grieve the decision.

- b. In making a decision to demote an employee or terminate employment for other reasons, such as medical incapacity, the following guiding principles are key:
 - The employee has been unable to work due to illness or disability for an extended period, has exhausted his or her sick leave credits, and may have been granted leave without pay;
 - The employee will not be able to return to duty within the foreseeable future. This determination should be based on an assessment of the employee's health, either by physicians of Health Canada, other medical practitioners deemed qualified by the employer, or both;
 - Efforts have been made to accommodate the employee's condition to the point of undue hardship, taking into consideration issues of health, safety and cost, where the employee is determined to be "fit for work with limitations" after having been examined by physicians of Health Canada, other medical practitioners deemed qualified by the employer, or both;
 - The employee has been made aware of services offered through the Employee Assistance Program; and
 - Other options, such as resignation or retirement on medical grounds, have been presented to the employee for consideration.

Please be mindful that jurisprudence has established that the delegated manager is to notify the employee in writing when a decision is made to demote him or her or to terminate his or her employment. The notification is to state the reasons for the decision and the effective date, and is to inform the employee that he or she has the right to grieve the decision.

- c. In making a decision to terminate employment during the probationary period, the following guiding principles are key:
- The employee on probation knows the specific job duties and requirements of the position;
 - The employee on probation is aware of the required standard(s) of performance and appropriate conduct;
 - The employee on probation receives feedback when performance or conduct requires improvement; and
 - The employee on probation receives the appropriate training for the position.

The probationary period is to assess the suitability of the employee for the position for which he or she has been hired. This assessment can include an evaluation of the following, as appropriate:

- The employee's reliability, including attendance at work;
- The employee's compatibility with colleagues or clients;
- The employee's ability to meet work requirements, including those associated with the workload; and
- The employee's ability to adhere to established policies, procedures, practices and codes of conduct.

Please be mindful of jurisprudence which has established that a decision to proceed with a termination of employment during probation should be based on objective and demonstrable grounds and must not be made arbitrarily, in a discriminatory manner, or in bad faith. That is, a manager or supervisor should be satisfied that the employee is not suitable for the position, and should be able to demonstrate that he or she has acted in good faith based on the employee's unsuitability for the position. The grounds for such a decision could include unsatisfactory performance or misconduct.

The employee is to be notified by the delegated manager in writing of the decision to proceed with a termination of employment during probation, stating the reason for the decision and the effective date.

4. Definitions

demotion (*rétrogradation*)

An action taken by the employer to appoint an employee to a position at a lower maximum rate of pay.

individual grievance (*grief individuel*)

A complaint in writing, presented by an employee on his or her own behalf, in compliance with section 208 of the Public Service Labour Relations Act, the Public Service Labour Relations Board Regulations or the applicable provisions of the relevant collective agreement.

medical incapacity (*incapacité médicale*)

A continuing, non-culpable absence from duty due to illness or disability that prevents the employee from fulfilling his or her employment obligations.

medical retirement (*retraite pour raisons de santé*)

Retirement on grounds of disability where physicians of Health Canada certify that there is an impairment that prevents the employee from engaging in any employment for which he or she would be reasonably suited.

termination (*licenciement*)

The separation from the core public administration of an employee for cause.

unsatisfactory performance (*rendement insatisfaisant*)

A non-culpable deficiency in job performance. It is the inability to perform the duties of one's position to a reasonable standard.

5. Redress

An employee who is demoted or whose employment is terminated for unsatisfactory performance or for reasons other than breaches of discipline or misconduct may grieve the decision by filing an individual grievance at the final level of the grievance procedure, under the Public Service Labour Relations Board Regulations and any applicable collective agreement. Individual grievances in these cases are also subject to third-party adjudication, under subparagraph 209(1)(c)(i) of the Public Service Labour Relations Act (PSLRA).

An employee whose employment is terminated during probation may grieve the decision by filing an individual grievance at the appropriate level of the grievance procedure under the Public Service Labour Relations Board Regulations and the applicable collective agreement. However, section 211(a) of the PSLRA prohibits the referral of these grievances to adjudication.

6. References

- Financial Administration Act
- Public Service Employment Act
- Public Service Labour Relations Act
- Public Service Labour Relations Board Regulations
- Policy Framework for People Management
- Collective agreements

7. Enquiries

Please direct enquiries about these guidelines to your departmental labour relations headquarters. Departmental labour relations headquarters can contact their Employer Representation in Recourse Analyst at TBS for interpretation of the guidelines:

Employer Representation in Recourse Team
 Compensation and Labour Relations
 Treasury Board Secretariat
 Ottawa ON K1A 0R5

Type 1

Recommendation

Documents where there are no identified concerns with their release.



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada

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Anti-harassment Workshops

August 23, 2010

We are pleased to inform you that the Canada Border Services Agency (CBSA) has entered into a memorandum of understanding with the Customs and Immigration Union and the Joint Learning Program (JLP) to deliver one-day anti-harassment workshops to all CBSA employees and managers. This important initiative is a priority for the Agency, the goal being to have all employees trained within a five-year period.

While some of you may already be familiar with the JLP, the following link provides information on the program as well as the anti-harassment workshop: <http://www.jlp-pam.ca/home-accueil-eng.aspx>. In brief, the JLP was formed as a result of collective bargaining in the fall of 2004, when the JLP was allocated funding for learning activities jointly developed and delivered by labour and management. The program emphasizes how bargaining agents and employers can work together to modernize and improve relations in the workplace. The anti-harassment workshop aims to give employees the knowledge and skills needed for proactive, effective advocacy of a healthy, harassment-free workplace. While the JLP is based on a partnership between Treasury Board and the Public Service Alliance of Canada, all employees will be invited and strongly encouraged to attend, regardless of which bargaining unit they belong to. Representatives from the various bargaining agents representing CBSA employees were invited to a briefing on this initiative on February 10, 2010.

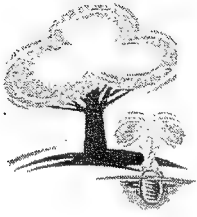
We are very pleased that this is moving forward and are committed to keeping you up-to-date and informed on the latest developments as they unfold. One of our next steps will be to identify facilitators for the workshops within the CBSA. An official call letter will follow shortly in this regard however, in the interim, should you be interested, the following link will provide you with useful information on becoming a facilitator: <http://www.jlp-pam.ca/invitation-eng.aspx>.

We look forward to your participation in assisting us in fulfilling this initiative.

Stephen Rigby
President

Ron Moran
National President
Customs and Immigration Union

Date Modified: 2010-08-20



Joint Learning Program Anti-harassment Workshop

Purpose/Desired Outcomes

Joint learning on anti-harassment is but one of several initiatives to improve union management relations and strengthen the parties' capacity to influence the evolution of better workplaces and healthier working environments.

In broad terms, the desired outcome is to create anti-harassment advocates who are vigilant in recognizing, preventing and eliminating workplace harassment. For union and management representatives, the desired outcome is to create anti-harassment champions and leaders who will recognize the parties' common ground and shared commitment to eliminating harassment and take the necessary risks and initiative to collaborate on anti-harassment strategies.

Workshop Description

This core project offered through the Joint Learning Program reflects the parties' commitment to work together to ensure everyone is treated with dignity and respect in the working environment.

The purpose of the one-day workshop is to equip individual employees with the knowledge and skills to proactively and effectively advocate for a healthy harassment-free workplace. The second day of a two-day workshop is for union and management representatives to develop organizational structures and strategies for a harassment-free environment.

The union and employer policies are a focal point in both the one and two-day sessions.

Participant's Kit

Use the following list to keep track of photocopying and inventory. Chapter 3 learning activities and at least one Chapter 7 learning activity are considered "core" - this means that they should be part of the design of all workshops. The policies are required for Chapter 3 and Chapter 5 learning activities.

An Introduction to Learning

- Exercise: Starter Statements
- Exercise: Thoughts about our workplace...

Chapter 1: Evolution of Anti-harassment

- Exercise: Evolution of Anti-harassment

Chapter 2: The Healthy Workplace

- Exercise: Interview Protocol
- Handout: Problem Solving and Appreciative Inquiry: A Comparison
- Handout: Appreciative Inquiry: A Summary
- Exercise: Iceberg

Chapter 3: Defining Harassment

- Handout: Excerpt from Arbitrator's Decision in *British Columbia and BCGEU*, (1995) 49 L.A.C. (4th) 193 (Laing)@242
- Exercise: Scenarios
- Exercise: Harassment is.... (copy single-sided so the staple can be removed if necessary for ease of comparison with the various policies)
- Exercise: Comparison of our Definition with the Policies
- Exercise: Robert and Nicole
- Script: Robert and Nicole (copies for volunteers only)
- Exercise: David and Richard
- Script: David and Richard (copies for volunteers only)

Chapter 4: Costs and Impact of Harassment

- Exercise: Costs of Harassment and Conflict (only one set of the attached word cards requires photocopying)
- Handout: Costs of Harassment and Conflict (Answer Key)
- Exercise: William Wemp and Susan McKinney
- Exercise: Impact of Harassment
- Handout: Determination (William Wemp and Susan McKinney)

Chapter 5: Knowing the Policies

- Exercise: The Policies: How Well Do You Know Them?
- Exercise: Robert Major Scenario
- Exercise: Robert Major Script (copies for volunteers only)
- Handout: Reasons for Decision - Robert Major
- Organizational Chart
- Exercise: Scorecard

Chapter 6: Intervention Skills

- Exercise: Communicating Disapproval

Chapter 7: Individual and Organizational Strategies

- Handout: Anti-harassment Actions
- Handout: Anti-harassment References (information specific to the workplace needs to be inserted)
- Exercise: A Second Chance: Prevention, Resolution and Rebuilding
- Exercise: Top Ten Anti-harassment Strategies

Closing the Learning Event

- Evaluation: Participant Assessment

Policies

- TBS Policy on the Prevention and Resolution of Harassment in the Workplace
- Policy 23A - PSAC Anti-harassment Policy: The Workplace (Policy and Guidelines for Implementation)
- Harassment Complaint Report Form

References

Effective facilitation requires subject matter expertise - knowledge of the various topics of the learning event. Understanding the content helps a facilitator gain the confidence and credibility to do a good job. While many of the resources listed below will help a facilitator understand the complexities of harassment, a thorough understanding of the policies is a critical aspect of a facilitator's preparation.

Policies

- **TBS Policy on the Prevention and Resolution of Harassment in the Workplace** (<http://www.tbs-sct.gc.ca>)
- **Policy 23A - PSAC Anti-harassment Policy: The Workplace (Policy and Guidelines for Implementation)** (<http://www.jlp-pam.ca>)
- **Harassment Complaint Report Form** (<http://www.jlp-pam.ca>)

References on Facilitation

- **PSAC Facilitators' Handbook** (<http://www.jlp-pam.ca>)

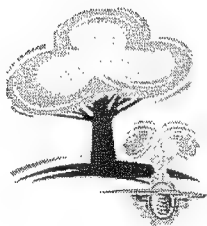
References on Harassment

- **Improve your knowledge! Take the "People to People Communication" on-line harassment awareness course** (<http://www.psagency-agencefp.gc.ca/>)
- **Results – Public Service Employee Survey** (<http://www.psagency-agencefp.gc.ca/>)
- **Dealing with Harassment: A Guide for Managers** (<http://www.psagency-agencefp.gc.ca/>)
- **Dealing with the Complaint Process: A Guide for Delegated Managers** (<http://www.psagency-agencefp.gc.ca/>)
- **Competencies Profile for Harassment investigators** (<http://www.tbs-sct.gc.ca>)
- **Anti-harassment Policies for the Workplace: An Employer's Guide** (<http://www.chrc-ccdp.ca>)
- **Harassment and the Canadian Human Rights Act** (<http://www.chrc-ccdp.ca>)
- **Guide to the Canadian Human Rights Act** (<http://www.chrc-ccdp.ca>)
- **Study on Harassment in the Workplace** (<http://www.psagency-agencefp.gc.ca/>)

- **Standards of Professional Conduct** (departmental standard, if it exists).

Other References

- **Directive on Informal Conflict Management Systems**
(<http://www.psagency-agencefp.gc.ca/>)
- **Informal Conflict Management Systems (ICMS) Resource Guide**
(<http://www.psagency-agencefp.gc.ca/>)
- **Constitution and Regulations of the Public Service Alliance of Canada (Section 25 - Discipline)** (<http://www.psac.com>)
- **Constitution and Regulations of the Public Service Alliance of Canada (Regulation 19 - Membership Discipline)** (<http://www.psac.com>)
- **Guidelines for Discipline** (<http://www.tbs-sct.gc.ca>)
- **Policy on the Indemnification of and Legal Assistance for Crown Servants** (<http://www.tbs-sct.gc.ca>)
- **Non-represented Employee Advisors Program** (<http://www.tbs-sct.gc.ca>)
- **Workplace Conflict? Making the Right Choice: A Guide for Federal Public Servants** (<http://www.psc-cfp.gc.ca>)
- **Moving Upward, Moving Onward: A Guide to Jumpstart! Your Career (Section IV: Recourse Options)** (<http://www.psc-cfp.gc.ca>)
- **A Handbook for Police and Crown Prosecutors on Criminal Harassment** (<http://canada.justice.gc.ca>)



The Joint Learning Program expresses appreciation to the Public Service Alliance of Canada for their significant contribution of learning materials from PSAC Education Kits.

Incident and injury reporting FAQs

- [Incident and injury reporting basics](#)
- [Incident and injury reporting for employers](#)
- [Incident and injury reporting for workers](#)

Incident and injury reporting basics

Who is required to report injuries to WorkSafeBC?

If a worker is injured on the job, the worker, employer, and the worker's treating physician must report the injury to WorkSafeBC.

What happens after an injury is reported?

WorkSafeBC will adjudicate the claim based on information from the employer, the injured worker, and the treating physician.

Incident and injury reporting for employers

What are my responsibilities when a worker is injured?

If a worker is injured on the job, as the employer, your responsibilities include:

- **Transporting the injured worker** to the nearest location where medical treatment can be obtained. You are also responsible for paying for transportation.
- **Reporting the incident/injury to WorkSafeBC** within three business days of the injury's occurrence or within three business days of you or your representative becoming aware of the injury.
- **Submitting an Incident and Injury Report** online or completing and sending the **Employer's Report of Injury or Occupational Disease** (Form 7) (PDF 81kb) to WorkSafeBC.
- If the worker received first aid on site, the first aid attendant must complete a first aid record. This must be retained at the work site for a minimum of three years. If the worker was referred to and received treatment at a clinic or hospital, the employer must submit an **Incident and injury report** (electronic Form 7) or complete and send the **Employer's Report of Injury or Occupational Disease** (Form 7 - PDF 81 kb) to WorkSafeBC.
- You must report fatalities and serious injuries immediately to our Prevention Emergency Line at 604 276-3301 in the Lower Mainland or toll-free 1 888 621-7233.

What type of incidents do I need to report?

A reportable injury is an injury arising out of and in the course of employment, or which is claimed by the worker to have arisen out of and in the course of employment, where one of the following conditions is present or subsequently occurs:

- The worker loses consciousness following the injury.
- The worker is transported or directed by a first aid attendant or other employer representative to a hospital or other place of medical treatment, or is recommended by such persons to go to such place.
- The injury is one that obviously requires medical treatment.
- The worker has received medical treatment for the injury.
- The worker is unable or claims to be unable by reason of the injury to return to his or her usual job function on any working day subsequent to the day of injury.
- The injury or accident resulted or is claimed to have resulted in the breakage of an artificial member, eyeglasses, dentures or a hearing aid.
- The worker or WorkSafeBC has requested that an employer's report be sent.

Where none of the conditions listed above are present, an injury is a minor injury and not required to be reported to WorkSafeBC unless one of those conditions subsequently occurs.

You must immediately report the following types of incidents to the WorkSafeBC's **emergency and accident reporting** whether or not an injury occurs:

- Any incident that kills, causes risk of death, or seriously injures a worker
- Any blasting accident that results in injury, or unusual event involving explosives
- A diving incident that causes death, injury, or decompression sickness requiring treatment
- A major leak or release of a dangerous substance
- A major structural failure or collapse of a structure, equipment, construction support system, or excavation
- Any serious mishap

Incident and injury reporting for workers

What do I do if I'm injured at work?

After an injury you must:

- Report your injury to your employer as soon as possible.
- Seek medical attention for your injury. If you need an ambulance or transportation from your workplace to your doctor's office or the hospital, your employer is required to pay those costs. Be sure to tell your doctor that your injury is work related.
- Report your injury to WorkSafeBC as soon as possible. If you miss work as a result of your injury, please call our **Teleclaim Contact Centre**. If a WorkSafeBC staff member asks you to complete a **Worker's incident and injury report** or an **Application for Compensation and Report of Injury or Occupational Disease** (Form 6) at any time it is important that you do so and submit it as soon as possible.

What do I do if I think I have a work-related disease or illness?

Report work-related diseases as soon as you notice the symptoms. Even if you're not working or you've changed jobs when you realize you have a work-related disease, contact WorkSafeBC right away.

Can my employer prevent me from reporting an injury?

It is against the law for an employer to persuade or attempt to persuade a worker not to report an injury, disease, death, or hazardous condition to WorkSafeBC.

Am I eligible for compensation?

To be eligible for compensation from WorkSafeBC, you must have sustained a personal injury or occupational disease that arose out of and in the course of your employment.

- For an injury, this generally means that the worker must have been working when hurt, and that the job had some causative significance to the injury.
- For an occupational disease, this means that the disease contracted must be caused by the work or the work environment.

What happens if I'm injured while working outside of B.C.?

If you are working outside of British Columbia and you normally live and work in B.C. and your employer is based in B.C., you will usually be covered by WorkSafeBC.

If you're not covered by WorkSafeBC, contact the workers' compensation board of the province in which you were injured. In some cases, you may be eligible for workers' compensation in B.C. and another province. In that case you have three months from the date of your injury to decide which board you intend to claim compensation from.

What happens if I move to another province while I'm still receiving payment from WorkSafeBC?

Let the WorkSafeBC staff member handling your case know, and provide your new address and phone number. Your benefits will not change unless the move delays your recovery and return to work. Note that WorkSafeBC will only pay health care costs up to the amount allowed in British Columbia.

Help

Claims FAQs

- [Claims basics](#)
- [Claims information for workers](#)
- [Benefits](#)
- [Claims information for employers](#)
- [Review and appeal](#)

Claims basics

What is a work-related injury or disease?

A work-related injury or disease is one that arises out of and in the course of employment or is due to the nature of employment.

To be covered by WorkSafeBC a worker must have been working when hurt, and the injury must have been caused by something to do with the job in order to be covered by WorkSafeBC.

For a disease, this means that the disease contracted must be caused by the work or the work environment in order to be covered by WorkSafeBC.

How is a claim processed?

After WorkSafeBC receives reports from

- the injured worker
- the employer and
- the attending doctor

a WorkSafeBC staff member **processes the claim** to determine if the injury or disease was work-related.

What types of claims are there?

There are three types of claims:

No time lost – health care claim only

- The worker has returned to work without losing time from work beyond the day of injury.
- WorkSafeBC covers medical costs; the employer pays the worker for the day the accident occurred.

Time-loss claim

- The claim is initially handled in the WorkSafeBC call centre by client service representatives (up to three weeks).
- Claims more than three weeks are transferred to the entitlement unit, where entitlement officers adjudicate and facilitate return to work.

Time-loss – case management

- Claims involving workers with non-traumatic activity-related soft tissue injury, catastrophic injury, severe brain injury, or a psychological injury are transferred directly to a case manager.
- For claims more than four to six weeks, or where it is expected there may be problems returning to work, the claim is transferred to a case manager for ongoing management.

What is a claim number?

When a claim is made with WorkSafeBC, a claim number is assigned. With this number, the worker, the employer, and the health care provider can **check the status** of a claim online to find out if the claim has been accepted.

What happens if the injury occurs out of province?

If you are working outside of British Columbia and you normally live and work in B.C. and your employer is based in B.C., you will usually be covered by WorkSafeBC.

If you're not covered by WorkSafeBC, contact the workers' compensation board of the province in which you were injured. In some cases, you may be eligible for workers' compensation in B.C. and another province. In that case you have three months from the date of your injury to decide from which board you intend to claim compensation.

What happens if I'm moving to another province while still getting payment from WorkSafeBC?

Let the WorkSafeBC staff member handling your case know, and provide your address and phone number. Your benefits will not change unless the move delays your recovery and return to work. Note that WorkSafeBC will only pay health care costs up to the amount allowed in B.C.

Claims information for workers

What should I do if I'm injured at work?

- **Report it to your employer immediately.**
- Seek medical attention for your injury. If you need an ambulance or transportation from your workplace to your doctor's office or the hospital, your employer is required to pay those costs. Be sure to tell your doctor your injury is work related.
- Report your injury to WorkSafeBC as soon as possible. If you miss work as a result of your injury, please call our **Teleclaim Contact Centre**. If a WorkSafeBC staff member asks you to complete a **Worker's incident and injury report** or an **Application for Compensation and Report of Injury or Occupational Disease** (Form 6) at any time, it is important that you do so and submit it as soon as possible.
- It is against the law for an employer to tell you to not report an injury or disease, or even try to talk you out of reporting it to WorkSafeBC.

How do I start a claim?

Report your injury to your employer, your doctor, and WorkSafeBC. You will then receive a claim number and a personal access number from WorkSafeBC so you can view information about your claim.

How do I view information on my claim?

You can **view information about your claim**, including WorkSafeBC correspondence, decisions on your claim, payment information, return-to-work dates, and more. You'll need the claim number and your personal access number.

When can I return to work?

You can return to work as soon as you, your doctor, and WorkSafeBC feel you are able.

You may be able to **start working part time**, or at reduced activity levels, or even at another task if you are not able to return to full duties immediately.

Who is on my claim's WorkSafeBC team?

Client service representatives answer questions and make entitlement decisions on claims, and manage straightforward claims with up to three weeks of time loss.

Entitlement officers make decisions on straightforward and complex cases, and manage straightforward claims involving up to four weeks of time loss.

Service expeditors support the entitlement officer and arrange work conditioning referrals.

Case managers provide ongoing management of complex claims that are in receipt of wage loss for periods of greater than four weeks.

Team assistants provide support to the case manager.

What if I move during the course of my claim?

If your name or address changes over the course of a claim, please complete and submit a **Change of address, name, or contact information (#25w112)** form to WorkSafeBC.

Benefits

What types of benefits are provided?

When a worker's claim is accepted, they begin receiving benefits from WorkSafeBC. The type and duration of the benefits depend on the nature of the injury and the work.

- **Wage-loss benefits**
- **Health care benefits**
- **Permanent disability and death benefits**

When do benefits begin?

WorkSafeBC benefits begin immediately:

- The employer is responsible for a worker's wages on the day of injury.
- Wage-loss benefits from WorkSafeBC start the first scheduled shift lost after the day of a work-related injury or disease.
- Health care costs are covered on the day of injury.

When do benefits stop?

Workers receive wage-loss benefits until the case manager concludes they are able to return to work or have recovered from the injury. If an employer can provide light or modified duties, and the doctor agrees it's safe for the worker to do them, they can return to work to those duties.

When can benefits be suspended?

WorkSafeBC benefits can be suspended if:

- The worker does not attend or does not co-operate in a medical examination or program arranged by WorkSafeBC
- The worker participates in any activity that might delay recovery
- The worker refuses treatment recommended by WorkSafeBC
- The claim is fraudulent

Claims information for employers

As an employer, what do I need to do when a worker is injured?

If a worker is injured on the job your responsibilities include:

- Transporting the injured worker to the nearest location where medical treatment can be obtained and paying for the transportation.
- Reporting the incident/injury to the WorkSafeBC within three business days of the injury's occurrence or within three business days of you or your representative becoming aware of the injury. View [benefits](#) of submitting your report online. (PDF 146kb)
- Submitting an [Incident and Injury Report](#) (Form 7) online or completing and sending the [Employer's Report of Injury or Occupational Disease](#) (PDF 81kb) to WorkSafeBC.
- You must report fatalities and serious injuries immediately to our Prevention Emergency Line at 604 276-3301 in the Lower Mainland or toll-free 1 888 621-7233.

If the worker misses work time as a result of his or her injury, ensure that he or she calls [Teleclaim](#) as soon as possible to report the injury to WorkSafeBC. Otherwise, ensure that he or she completes and submits a [Worker's incident and injury report](#) or an [Application for Compensation and Report of Injury or Occupational Disease](#) (Form 6) to WorkSafeBC.

What happens if I don't report a worker's injury?

Failure to report an injury or coercing a worker not to report an injury is an offence against the *Act* and can result in fines.

You're not usually required to report to WorkSafeBC if the worker does not lose time from work and does not seek medical attention. However, [some accidents and incidents](#) do need to be reported regardless of injuries.

How do I check the status of my worker's claim?

If you are an employer or health care provider you can view the status of a claim, but not wage-loss payment information, using [online claim status](#).

Review and appeal

What do I do if I disagree with a decision made by WorkSafeBC on my claim?

If you disagree with a WorkSafeBC decision, you can have request to have it [reviewed](#).

The [Claims Review and Appeal Guide for Workers and Dependents](#) (PDF 77kb) provides detailed information on how workers and dependents can request a review and file an appeal and the [Claims Review and Appeal Guide for Employers](#) (PDF 80kb) provides detailed information on how employers with claims concerns can request a review and file an appeal.

[More FAQs](#)

Maynard, Alyson

From: Gray, Brian
Sent: June 19, 2012 03:26 PM
To: Maynard, Alyson
Cc: Clarke, DougC; Wong, Calvin
Subject: RE: Request for Information regarding the JLP "Creating a Harassment-Free Workplace" workshop for Pacific

Alyson, following are what Pacific Region has provided in terms of workshops since February, 2011:

4 workshops in Downtown Vancouver - approx 75 participants from VIA, Metro, HR/Corporate Services, EID, Trade Compliance and Programs
 6 workshops at VIA - approx 100 participants from VIA, Metro, HR/Corporate Services, EID, Trade Compliance and Programs
 3 workshops in Victoria - approx 55 participants from Vancouver Island
 2 workshops in Prince Rupert - approx 40 participants from Prince Rupert
 3 workshops at Pacific Highway - approx 55 participants from Pac Highway District
 1 workshop at Osoyoos - approx 15 participants for Okanagan & Kootenay District

Total 19 workshops delivered per the CBSA/JLP MOU to date, approx 340 participants.

Our goal is to ensure all Pacific Region Employees are provided the JLP Creating a Harassment Free Workshop within the 5 year period of the MOU. We plan to deliver between 1 and 3 workshops per month, from mid-September to mid-June each year. No specific dates have been planned for September to March yet, these will be set up starting in August. I work closely with Learning Coordinators from each District and Division to gauge the demand, acquire facilitators and plan individual workshops. Where possible, we try to combine several lower mainland sites together for each workshop, to minimize operational issues, and provide a good mix of different experiences and backgrounds. As an example, the most recent session we completed was last week, where we had participants from VIA, Trade Compliance, EID, HR, Security, Program Services and Communications

We have delivered several outside the lower mainland in the first year, especially in the West Coast and Yukon District, and will likely be more focussed on the Lower Mainland areas for the rest of this year.

If there is any more specific information you need, please let me know.

Brian Gray

Regional Training Coordinator | Coordonnateur régional de la formation
 Human Resources - Pacific Region | Ressources humaines - Pacifique
 Canada Border Services Agency | Agence des services frontaliers du Canada
 Tel: (604) 666-9645 Fax/Telecopieur (604) 666-9595 Cel: (604) 202-4120
 Email/Courriel: brian.gray@cbsa-asfc.gc.ca

<http://cbsa-asfc.gc.ca>

From: Maynard, Alyson
Sent: June 19, 2012 08:23 AM
To: Gray, Brian
Subject: RE: Request for Information regarding the JLP "Creating a Harassment-Free Workplace" workshop for Pacific

Hi Brian,

Thanks for getting back to me so quickly. Would it be possible to have it by tomorrow? I'm getting ready to brief the management representative, as well as our management team, and ensure everyone is prepared for the mediation.

Thank you,
 Alyson

Alyson Maynard
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 Email: alyson.maynard@cbsa-asfc.gc.ca

From: Gray, Brian
Sent: June 19, 2012 11:21 AM
To: Maynard, Alyson
Subject: RE: Request for Information regarding the JLP "Creating a Harassment-Free Workplace" workshop for Pacific

Hi Alyson, I can put this together fairly quickly, although we don't really have an official rollout timetable for the next couple of years. When would you need this by?

Brian Gray
 Regional Training Coordinator | Coordonnateur régional de la formation
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 Canada Border Services Agency | Agence des services frontaliers du Canada
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<http://cbsa-asfc.gc.ca>

From: Maynard, Alyson
Sent: June 19, 2012 08:15 AM
To: Gray, Brian
Subject: Request for Information regarding the JLP "Creating a Harassment-Free Workplace" workshop for Pacific
Importance: High

Hi Brian,

My name is Alyson Maynard and I am a Senior Labour Relations Advisor with the CBSA.

In July, I will be attending a mediation for an employee's grievance related to harassment. It is anticipated that the employee will ask what training has taken place in the Pacific Region related to preventing harassment in the workplace

and ensuring that employees are provided a safe workplace, free from harassment. As such, it would be helpful to know how many employees in the Pacific Region have received the 1-day JLP training, confirmation of which Ports have or have started providing the training to their employees, and information about the anticipated training schedule in the coming years (such as are there any sessions planned, which Ports will be participating, how many employees will be trained, and what is the timeframe to have all employees trained). Could you please provide this information at the earliest possible time?

If you have any questions, please do not hesitate to let me know.

Thank you,
Alyson

Alyson Maynard
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Canada Border
Services Agency

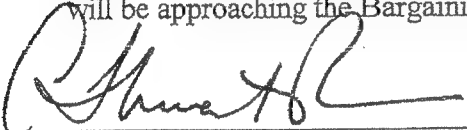
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frontaliers du Canada

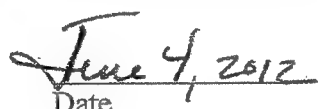
For: Information

**CREATING A HARASSMENT-FREE WORKPLACE WORKSHOPS
AT THE CANADA BORDER SERVICES AGENCY (CBSA)
For the NLMCC meetings of June 12 and 14, 2012**

For the NLMCC members

- The following is an update to be provided at the June 2012, National Labour Management Consultation Committee (NLMCC) meeting, on the implementation of the Memorandum of Understanding (MOU) between the Joint Learning Program (JLP), the CIU and the CBSA.
- On May 5, 2010, an MOU was signed between the CBSA, the CIU and the JLP to deliver one-day "*Creating a Harassment-Free Workplace*" workshops to all employees at the CBSA over a five-year period.
- This joint endeavor will contribute to fostering positive labour relations within the CBSA. While the JLP is based on a partnership between TBS and the PSAC, participation in the workshops within the CBSA includes all employees, regardless of which bargaining unit they belong.
- In March 2012, the first CBSA led five-day orientation (train-the-trainer) session with 18 participants from various regions was held at the Rigaud Learning Centre. The session was delivered by CBSA facilitators.
- The March 2012 feedback received from the participants was extremely positive. As an example, one of the participants provided the following comment: "This was one of the most enjoyable, thought provoking and enlightening courses I have ever had in 33 years government service. Thank you so much for your efforts and dedication."
- The CBSA hopes to deliver annual sessions to recruit new trainers in order to continue to develop our capacity internally to deliver workshops.
- As of March 31, 2012, over 1600 employees have attended a JLP "*Creating a Harassment-Free Workplace*" workshop. The CBSA is reviewing participation rate and will be approaching the Bargaining Agent partner in this regard in the near future.


Approved by Camille Therriault-Power
Vice-President, Human Resources


Date

Canada



Canada Border
Services Agency

Agence des services
frontalières du Canada

Canada

[Home](#) > [HRB](#) > [Policies](#) > [Labour](#) > [Conduct](#) > [Code of Conduct](#)



Code of Conduct

Message from the President and the Executive Vice-President

Employees at the Canada Border Services Agency (CBSA) share a commitment to create a working culture based on public service and CBSA values and ethics -- a culture where public trust is acknowledged by the integrity and professionalism of CBSA employees.

With this commitment in mind and inspiration from existing codes in the legacy organizations, the CBSA developed and created its own code of conduct. The *CBSA Code of Conduct* was designed to help you know the standard of conduct expected of you at the CBSA. Whether you serve at a port of entry, provide client services, respond to appeals, provide services to other employees, manage programs and resources, or carry out the many important facets of the CBSA's mandate, the Code clarifies the CBSA's values and principles and will help you in making ethical decisions. This Code should be viewed as a supplement to the *Values and Ethics Code for the Public Service*.

We encourage you to read the *CBSA Code of Conduct* to fully appreciate its guidance and our corporate values as they relate to your work. We count on each one of you to integrate the values, principles, and professional standards of conduct in your actions in the service of this Agency.

Alain Jolicoeur
President

Stephen Rigby
Executive Vice-President

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On a final note...

Appendix

CBSA Policies and Directives

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Customs Memoranda

Mandate and Mission

The mandate of the Canada Border Services Agency (CBSA) is to provide integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all legislative requirements.

The mission of the CBSA is to ensure the security and prosperity of Canada by managing the access of people and goods to and from Canada.

Accountability

You are responsible for behaving ethically and in keeping with the values and standards set out in the *Values and Ethics Code for the Public Service*, which forms part of the conditions of employment in the Public Service of Canada. The *CBSA Code of Conduct* is an extension of the *Values and Ethics Code for the Public Service* and both codes apply to all public servants working at the CBSA.

Public Service Values

- ➔ Democratic Values: Helping the Minister, under law, to serve the public interest.
- ➔ Professional Values: Serving with competence, excellence, efficiency, objectivity and impartiality.
- ➔ Ethical Values: Acting at all times in such a way as to uphold the public trust.
- ➔ People Values: Demonstrating respect, fairness and courtesy in their dealings with both citizens and fellow public servants.

Complete definitions can be found in the Values and Ethics Code for the Public Service.

CBSA Values

- ➔ Integrity: We exercise our authority in a principled, open and fair manner. We will accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.
- ➔ Respect: We show the utmost appreciation for the dignity, diversity and worth of all people. We do this by listening to others to understand their positions and by behaving in a just, courteous and reasonable manner. We respect the privacy of Canadians and strongly uphold the *Canadian Charter of Rights and Freedoms*.
- ➔ Professionalism: We set high standards of achievement for our employees and strive for the provision of competent, quality service. In particular, we are innovative and harness smart technology to perform our mission.

Definitions of the CBSA's values are in the 2004 - 2005 Departmental Performance Report.

Leadership Conduct

We can each be a model for others and, as such, be a leader. You are expected to demonstrate leadership by respecting the *CBSA Code of Conduct*.

You are expected to:

- ➔ provide effective, responsible and fair service to all people;
- ➔ exemplify public service values and the CBSA's corporate values;
- ➔ maintain open, positive communications and working relationships; and
- ➔ respect equity and diversity in all their dimensions.

Managers shall ensure that all employees under their responsibility are familiar with the *Values and Ethics Code for the Public Service* and the *CBSA Code of Conduct*. Managers should also recognize excellence and encourage personal and professional development in a learning environment.

Expected Standards of Conduct

The following section outlines in general terms the **main standards** of conduct to be followed, at a minimum, by all CBSA employees. The standards of conduct will naturally evolve over time, in response to and in keeping with changes to the service the CBSA provides.

a) Appearance

General policy

You must ensure that your appearance and dress reflect the professional image of the CBSA and the public service. You are expected to be neat, clean and well groomed. Your appearance and dress must be consistent with the duties that you perform and must not interfere with the work performance of other employees.

See the CBSA Uniform Policy and Standards of Appearance.

Uniformed employees

Uniformed employees must follow the CBSA Uniform Policy and Standards of Appearance.

b) Care and Use of Government Property and Valuables

You must not use property, equipment, materials, vehicles or facilities purchased, used or leased by the CBSA for other than official purposes, unless you have received proper management authorization. This includes, but is not restricted to, vehicles, buildings, space, premises, facilities, uniforms, files and documents, office equipment and supplies, computers, software, video equipment, telecommunications devices such as cell phones, government credit cards, telephone calling cards and defensive equipment like pepper spray, handcuffs, batons and duty firearms.

You cannot transport anyone in a government-owned or leased vehicle, aircraft or vessel unless that person's presence is connected with an official assignment, authorized by management, or it is in the best interests of the CBSA.

You are expected to account for and protect any government property and valuables that you possess or control. If any item is lost, stolen or damaged, you must immediately report the incident to your manager.

Badges, official identification and officer or office stamps

You must use badges, official identification and officer or office stamps only for the purposes for which they were intended and in the best interests of the CBSA. A government identification card must be displayed on government premises when you are asked to identify yourself as a government representative.

You are prohibited from using your job title, badge or any other official identification to obtain or appear to obtain any privilege,

See the TBS Guidelines

favour for yourself or others, or to do anything that is illegal, improper or against the best interests of the CBSA. Such infractions will be considered serious and will result in disciplinary action.

for Discipline and the
CBSA Discipline Policy

If your badge, stamp or official identification is lost, stolen or damaged, you must immediately report the occurrence to your manager. If you are temporarily or permanently reassigned and your new functions do not require the use of a badge, stamp or official identification, you must return them to your manager.

Intellectual property

You cannot market or sell anything created, designed, developed or produced as part of your job, even if you, or any other person, have improved or modified it outside working hours.

See section 12 of the
Copyright Act and
 section 3 of the Public
 Servants Inventions Act.

Returning government property and valuables when leaving the job

Unless you have received proper management authorization, you must return all government property and valuables received as part of your duties when you leave your position or when you are so requested by a proper authority.

c) Confidentiality and Disclosure of Information

You must ensure that you comply with all legislation, directives and procedures relating to the collection, use, sharing, storage, disclosure, distribution and disposal of any personal information pertaining to individuals or commercial information pertaining to businesses.

When you took the Oath of Office and Secrecy/Solemn Affirmation of Office and Secrecy you swore or affirmed that you would not disclose or make known any matter that comes to your knowledge by reason of your employment. You must keep in strict confidence all information you obtain about the CBSA's clients and all other official information to which the public does not have access. This includes information about policies, programs, practices and procedures to which the public does not have official access.

You may disclose this type of information to clients or designated representatives only if specifically authorized by legislative or departmental guidelines.

See section 107 of the Customs Act and memoranda D1-16 Explanation of Section 107 of the Customs Act and D1-16-2-INTERIM - Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information and D1-16-2.

You may access official information only if authorized and required for work. Under no circumstances may you use this information for personal use, gain or financial benefit for yourself, your relatives or anyone else.

You are required to safeguard official information and must use, process, store and handle

designated or classified information only for purposes specified by the CBSA. You may not remove, hide, change, mutilate, copy or destroy any official information.

You are prohibited from destroying, altering, falsifying or concealing a record, or directing anyone to do so, with the intent of obstructing the right of access set out in section 67.1 of the *Access to Information Act* or disclosing any personal information without proper authorization as set out in the *Privacy Act*.

Consult your manager if you are uncertain about how to treat specific information.

When you leave the employment of the CBSA, you cannot take with you or retain any CBSA records or documents, including paper documents, CDs and diskettes with electronic information, video, etc., unless authorized by your manager.

Providing testimony or information

You must cooperate and assist in the conduct of governmental investigations such as an investigation conducted by Internal Affairs Division or a Health and Safety Officer who is carrying out his or her duty under the *Canada Labour Code*. You must provide information and complete access to the CBSA information systems, documents and records to an investigator to the extent that such access is legally permitted.

You are required to give testimony on behalf of the CBSA or the Crown in court and/or before any administrative tribunal or panel. While you are obligated to assist in investigations ongoing under Government of Canada legislation, you should consult your manager before assisting a provincial or foreign authority.

d) Conflict of Interest

You must comply with the *Values and Ethics Code for the Public Service*. This means that you must avoid and prevent situations that could give rise to a real, apparent or potential conflict of interest. If a conflict does arise between your private interests and your official duties, the conflict should be resolved in favour of the public interest. You must never act in a manner that is damaging or potentially damaging to the CBSA or the Public Service of Canada.

You cannot use your position to influence or bypass CBSA procedures for personal gain or the benefit of your family, friends, colleagues or anyone else.

You must report to your manager all circumstances that may place you in a situation of real, apparent or potential conflict of interest. If you are unsure or do not know if your actions, activities or situation constitutes, or could appear to constitute, a conflict of interest, ask or report it to your manager in writing by submitting a confidential report.

e) Consumption of Intoxicants and Smoking

You must never report to work under the influence of alcohol or illegal drugs. You are not

permitted to consume alcohol or illegal drugs while on duty, in uniform (on or off-duty), operating an official vehicle, or on any premises where the CBSA conducts its business.

However, it is recognized that, on occasion, consumption of alcohol may take place on CBSA premises in connection with the celebration of special events. Such activities must be authorized by management and take place in areas not open to the public. Following these activities, you must be able to carry out your responsibilities effectively. Impairment due to the use of alcoholic beverages will not be tolerated.

You are not permitted to smoke on duty (unless you are on a rest period) or in any building where the CBSA conducts its business.

f) Contact with the Public and the People You Work With - Sensitivity, Respect and Responsiveness

At all times, you must be courteous and respectful towards the public and people you work with, even under difficult conditions such as in times of personal stress and in the face of provocation.

You must never make abusive, derisive, threatening, insulting, offensive or provocative statements or gestures to or about another person.

You are prohibited from engaging in any discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

See section 2 of the Canadian Human Rights Act.

It is recognized that, at times, it is difficult to work with the public and that learning how to deal with difficult people is part of the job. At times, clients' actions may be abusive or threatening or even result in personal assault. You may have to resort to reasonable use of force in certain situations. However, you must exercise the use of reasonable force in accordance with training procedures, CBSA policies and the *Criminal Code of Canada*. The CBSA will provide you with protection, support and assistance in accordance with the policy on the Policy on Legal Assistance and Indemnification. The policy provides for both indemnification and legal assistance with respect to liability arising from circumstances in which you "acted honestly and without malice within the scope of [your] duties or employment and met reasonable departmental expectations."

See the Policy on Legal Assistance and Indemnification.

You must promptly report full details of any incident to your manager and cooperate in any subsequent investigation.

g) Electronic Network Access and Uses

If you have access to, or use the CBSA's computer systems, equipment or software, you must make every effort to protect the CBSA from any possible threats to security by, in particular:

- ⇒ guarding against accidental or deliberate destruction of data and equipment; disclosure of sensitive information, access identification and password to your system; theft and corruption; and exposure to viruses;
- ⇒ following the CBSA's policies and procedures regarding the access restrictions to data banks and the posting of information;
- ⇒ following the CBSA's policies and procedures regarding the purchase and use of software and other systems use, including complying with security restrictions; and
- ⇒ reporting any breach of computer security, policies and standards to your manager.

CBSA's computer systems or those of external agencies accessed via the CBSA's network, software, equipment, networks, Internet, intranet and e-mail are for authorized business purposes.

However, limited personal use of the Internet, intranet and e-mail is permitted provided it complies with all related legislation, policies and guidelines, does not affect your productivity or that of your colleagues, and imposes no storage burden on the CBSA computer systems. Examples of acceptable limited personal use include professional activities, career development, or reading or writing a brief e-mail after hours or during a lunch break.

Some examples of misconduct related to the use of electronic networks that are offences under the *Criminal Code of Canada* are:

- ⇒ knowingly viewing, downloading, possessing or distributing child pornographic images or material;
- ⇒ communicating images, material or e-mails containing offensive language or inappropriate comments that are likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule, or that are designed to insult the person;
- ⇒ infringing copyright; or
- ⇒ hacking and trying to defeat the security features of electronic networks.

See Treasury Board's *Policy on the Use of Electronic Networks*, *CBSA Policy on the Use of Electronic Resources* and the *Guidelines for the Policy on the Use of Electronic Resources*

Authorized officers may access restricted sites, such as those with pornography or hate propaganda, when conducting authorized investigations or intelligence probes or when researching and developing CBSA-sanctioned training material. CBSA officers may be required to view all types of material to make determinations with respect to admissibility.

h) Financial Matters

Borrowing or lending money

Employees must not:

- ⇒ borrow money from a client;
- ⇒ present a personal cheque to be cashed by a client; or
- ⇒ ask any employee to sign a financial instrument, as an endorser or co-signer, to secure an amount of money being lent or borrowed, unless that employee is a spouse

or common-law partner (or relative).

Care of money, credit cards and items having a financial value

You must follow established procedures and reasonable standards of care in accounting for, safeguarding and using government money, credit cards and any type of item having a financial value such as phone cards in your possession or control.

You must report immediately to your manager if monies, credit cards or any type of item having a financial value is misplaced, lost or stolen, while in your care.

Endorsing cheques

You are prohibited from endorsing cheques, both personal and business, made payable to "cash" issued by customs-house brokers, importers or their agents. If you endorse such a cheque, you may find yourself contributing to a possible misappropriation of business funds.

Illicit Gambling

You are not permitted to gamble on CBSA premises or while on duty. The Treasury Board *Policy on the Use of Electronic Networks* prohibits the use of computer systems and electronic networks for the purpose of illicit gambling.

Draws, usually called "50-50" draws, i.e., collections taken up by public servants to establish a sum of money, half of which would go to the winner of the draw and the other half to a charity, are not covered by the *Values and Ethics Code for the Public Service* because they do not constitute solicitation of the private sector. The draws are social and voluntary activities, shared by public servants. However, you should be aware that draws of this type are regulated by provincial authorities and subject to licensing requirements.

Legal provisions and fraud

You must comply with all legal provisions governing financial matters and safeguard against any potential situations of fraud or inappropriate use of funds as stated in the *Financial Administration Act* and the *Criminal Code of Canada*.

You must tell your manager immediately if you have knowledge of, or are aware of, any violation or fraud.

You are prohibited from conspiring or colluding to defraud the Crown, or providing the opportunity to another person to do so, or intentionally permitting a person to contravene the law.

i) Gifts, Hospitality and Other Benefits

In accordance with the *Values and Ethics Code for the Public Service*, you must not accept or solicit any gifts, hospitality or other benefits that may have a real or apparent influence on your objectivity in carrying out your official duties or that may place you under obligation to

the donor. This could appear as influencing or potentially influencing your judgment, or calling into question your professional integrity or the integrity of the CBSA.

If a gift is offered to you, you should advise your immediate supervisor in writing, regardless of whether you accept or refuse the gift, hospitality or benefit.

Acceptance of gifts, hospitality and other benefits is permissible if they:

See the Values and Ethics Code for the Public Service.

- ➔ are infrequent and of minimal value such as low-cost promotional objects, simple meals or souvenirs with no cash value;
- ➔ arise out of activities or events related to official duties of the public servant concerned;
- ➔ are within the normal standards of courtesy, hospitality or protocol; and
- ➔ do not compromise or appear to compromise your integrity or that of the CBSA in any way.

In case of doubt, you should decline the gift, hospitality or other benefits.

Where it is **impossible to decline** gifts, hospitality and other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the CBSA to warrant acceptance of a certain type of hospitality, you must discuss it with your manager, who will seek **written direction from the manager delegated to make decisions on conflict of interest**. You will then be notified in writing whether the gift, hospitality or other benefit is to be declined or retained by the CBSA, donated to charity, disposed of or retained by you.

j) Solicitation of Gifts, Hospitality and Other Benefits

At no time should you solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or organization in the private sector who has dealings with the government.

In the case of fundraising for charitable organizations, you should ensure that you have prior authorization from your manager, who will seek written authorization from the **manager delegated to make decisions on conflict of interest**, to allow you to solicit donations, prizes or contributions in kind from external organizations or individuals.

See the Values and Ethics Code for the Public Service.

k) Harassment and Discrimination

Harassment is any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, and any act of intimidation or threat.

Everyone is entitled to work in an environment free from harassment and discrimination. Harassment and discrimination affect workplace and individual well-being and will not be

tolerated.

While management is responsible for fostering a work environment free from harassment, it is everyone's responsibility to treat fellow employees with fairness, respect and dignity.

You are prohibited from engaging in any improper conduct that is directed at and offensive to another person or persons in the workplace, and that you know or ought reasonably to know will cause offence or harm.

See the Treasury Board Policy on the Prevention and Resolution of Harassment in the Workplace.

You are prohibited from engaging in any discriminatory or harassing behaviour, action or inaction that could harm an employee's working relationships, job security or general well-being at work. This includes discrimination or harassment of CBSA employees that may happen outside the workplace or outside working hours, that harms an employee's working relationships, job security or general well-being at work. Harassment is a serious matter and the filing of frivolous or unsubstantiated harassment claims is not acceptable.

If you witness harassment or discrimination or are being harassed, you should speak to your manager and seek his or her support in this situation.

I) Hours of work

Your hours of work and rest periods must be consistent with the provisions of your collective agreement.

You must be punctual so you can be relied upon by the people for whom you work or for the people who work for you. Whenever you need to change your regular work schedule, such as to request leave, leave work early or change your break or meal periods, you must do so in accordance with the established procedures in your workplace.

If you are to be absent from work because of illness or emergency, you need to explain the circumstances to your supervisor and inform him or her in advance of when you expect to return to work.

m) Off-duty Conduct

General

Your off-duty conduct is usually a private matter. However, it could become a work-related matter if it:

- ➔ harms the Agency's reputation or program;
- ➔ renders you unable to perform a requirement of your duties;
- ➔ leads other employees to refuse, be reluctant or be unable to work with you;
- ➔ renders you guilty of a serious breach of the *Criminal Code of Canada* and thus renders your conduct injurious to the general reputation of the Agency and its

employees. For example, the nature of the criminal charges may be incompatible with the functions of a peace officer;

- ➔ makes it difficult for the Agency to manage its operations efficiently and/or to direct its workforce.

Criteria found in Millhaven Fibres Ltd., Millhaven Works, and Oil, Chemical and Atomic Workers Int'l Union, Local 9-670 (1967), 1 (A) Union-Management Arbitration Cases 328. These criteria were subsequently adopted by the PSSRB in several decisions.

You must report to your manager as soon as possible if you are arrested, detained or charged with a violation in Canada or outside Canada of laws, regulations, a federal statute or the *Criminal Code of Canada* related to your official duties. You must report a traffic violation or highway code ticket received during the use of a government-owned or leased vehicle.

Political activity

You may engage in any political activity so long as it does not impair, or is not perceived to impair, your ability to perform your duties in a politically impartial manner. You should consult your manager if you are unsure whether the political activity you want to engage in is appropriate.

See the guidance tools published by the Public Service Commission to help you make reasonable decisions about your involvement in political activities in light of specific circumstances.

When taking part in political activities, you must ensure that the nature of your participation does not conflict with your ability to:

- ➔ remain loyal to the Government of Canada;
- ➔ maintain an impartial and effective public service; and
- ➔ be politically neutral, in consideration of your position and visibility as a CBSA employee.

In order to be a candidate in a federal, provincial or territorial election, you have to request and obtain a leave of absence without pay from the Public Service Commission.

In order to be a candidate in a **municipal election**, you have to request and obtain **permission** from the Public Service Commission.

n) Publicly Commenting for the CBSA

Only authorized spokespersons can issue statements or make comments about the CBSA's position on a given subject. If you are asked for the CBSA's position, you must refer the inquiries, through your manager, to the Communications and Consultation Directorate or the authorized CBSA spokesperson.

o) Public Criticism of the CBSA

The duty of loyalty owed by public servants to the Government of Canada encompasses a duty to refrain from public criticism of the Government of Canada. Failure to observe the duty of loyalty may justify disciplinary action, including termination of employment. However, the duty of loyalty is not absolute and public criticism may be justified in certain limited circumstances. For further guidance, refer to the Duty of Loyalty - Summary, a paper written by the Public Service Agency of Canada.

CBSA employees must exercise caution in ensuring that public statements:

- ➔ do not undermine or compromise the integrity or security of CBSA operations or national security;
- ➔ do not impair or conflict with their ability to carry out duties;
- ➔ do not call into question their impartiality in carrying out their duties; or
- ➔ do not impair the ability of the CBSA in carrying out its mandate.

If in doubt, you are strongly encouraged to discuss the matter with your manager.

You should use internal means to bring any criticisms you may have to the attention of CBSA management.

p) Safety and Security

While on the job, you must observe safety and security standards, rules and procedures established for the workplace and the use of equipment. You must report to your manager promptly, when there is a threat or any work-related hazard, accident or injury to yourself or other employees.

See the Canadian Labour Code, the Canada Occupational Health and Safety Regulations, the Refusal to Work Directive and other Treasury Board policies and directives.

You must immediately notify your manager or a security officer if you become aware of:

- ➔ a security infraction;
- ➔ a negligent or criminal act;
- ➔ an unsafe or hazardous condition at work;
- ➔ an accident or injury to yourself or other employees; or
- ➔ a failure on the part of any employee to observe workplace safety and security standards, rules and procedures.

q) Terms and Conditions of Employment

You must observe the terms and conditions of employment contained in your collective agreement, as well as those set out in CBSA and Treasury Board policies.

r) Unions and Similar Employee Associations

The CBSA respects the right of employees to belong to employee organizations (unions) and to take part in their legal activities.

The Public Service Labour Relations Act (PSLRA) contains prohibitions against:

- ➔ intimidating employees in the creation or administration of employee organizations;
- ➔ canvassing for members on the employer's premises during the working hours of an employee;
- ➔ restraining employees from becoming members of an employee organization;
- ➔ discriminating against a member of an employee organization in regard to employment or to any condition of employment, for example; or
- ➔ intimidating an employee, by threat of dismissal or any other kind of threat, to cause the employee to abandon his or her grievance or refrain from exercising his or her right to present a grievance.

Disclosure of Information Concerning Wrongdoing in the Workplace

Wrongdoing is defined as the following:

- a. the contravention of an Act of Parliament or of the legislature of a province, or of any regulations made under any such Act;
- b. the misuse of public funds or assets;
- c. gross mismanagement in the federal public sector;
- d. a serious breach of a code of conduct;
- e. an act or omission that creates a substantial and specific danger to the life, health and safety of Canadians or the environment; and
- f. knowingly directing or counselling a person to commit a wrongdoing.

When you have reasonable grounds to believe that another person has committed a wrongdoing in the workplace, you should first talk to your manager. As a last resource at the Agency, you can disclose this information to the CBSA Senior Officer for the Disclosure of Wrongdoing in the Workplace with confidence that you will be treated fairly. If the matter is not appropriately addressed at this level or you have reason to believe it could not be disclosed in confidence within the Agency, it may be referred to the Public Sector Integrity Commissioner.

When you disclose information concerning wrongdoing, you are expected to:

- ➔ follow the internal processes established to raise instances of wrongdoing in the workplace; and
- ➔ respect the reputation of individuals by not making trivial or vexatious disclosures of wrongdoing or by making disclosures in bad faith.

All managers and staff have a responsibility to ensure that allegations or evidence of misconduct or malfeasance are reported immediately.

See the Treasury Board
Public Servants
Disclosure Protection
Act.

It is the policy of the CBSA that all allegations or evidence of employee misconduct or malfeasance must be investigated to ensure that the professional reputation of CBSA employees and the integrity of CBSA operations are protected. Appropriate measures must be taken as a result of misconduct or malfeasance.

When an activity, statement or documentation comes to your attention and you think it may involve or constitute improper (or criminal) activity, you must report the incident to your manager **immediately**.

Disciplinary Action for Breaches of the Code

CBSA employees who are found to have breached the *Values and Ethics Code for the Public Service*, the *CBSA Code of Conduct* or CBSA policies may be subject to disciplinary measures based on the seriousness of the misconduct and in accordance with the *CBSA's Discipline Policy*. In cases of serious misconduct, the disciplinary action could be termination of employment. Some cases of misconduct may result in an employee being found guilty of an indictable offence and liable, on conviction, to fines and/or imprisonment based on legislative and regulatory requirements.

See the Criminal Code of Canada, the Customs Act, the Immigration and Refugee Protection Act, etc.

On a final note...

This Code was created to guide your conduct as a public servant and a CBSA employee. However, it is impossible to cover all the situations you may face in the performance of your duties. In such situations, you must determine the appropriate course of action, based on common sense and public service values. Asking yourself the following questions should help you to make the right decision:

- ➔ Is what I want to do legal and consistent with CBSA/public service policies?
- ➔ Is what I want to do consistent with CBSA/public service values?
- ➔ What are the consequences of the action I am about to take or the decision I am about to make?
- ➔ If I do it, will I feel comfortable?
- ➔ How will the media or general public perceive this action?

Remember:

- If you know it is wrong, or it "feels" wrong, don't do it!
- If you are not certain, ask questions.
- Continue to ask until you get an answer.

Appendix

Reference Documents

Following is a list of reading resources that relate to the *CBSA Code of Conduct*. It is by no means exhaustive, but it includes the most relevant material.

CBSA Policies and Directives

CBSA Uniform Policy and Standards of Appearance

Discipline Policy

Arming Initiative - Related policies

Policy on the Use of Electronic Resources

Acts and Regulations

Canada Labour Code

Copyright Act, section 12

Criminal Code of Canada, section 122

Customs Act, section 107

Financial Administration Act

Public Servants Disclosure Protection Act

Public Servants Inventions Act, section 3

Public Service Employment Act

Public Service Labour Relations Act

Treasury Board Policies

Guidelines for Discipline

Harassment in the Workplace - Policies and Publications

Occupational Safety and Health - Policies and Publications

Refusal to Work Directive

Uniforms Directive

Policy on the Use of Electronic Networks

Values and Ethics Code for the Public Service

Customs Memoranda

D1-16-1 - Explanation of Section 107 of the Customs Act

D1-16-2-INTERIM - Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information

Date Modified: 2010-07-30

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POLICY ON VIOLENCE PREVENTION IN THE WORK PLACE



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada

VIOLENCE PREVENTION PROGRAM

Policy on Violence Prevention in the Work Place

This policy comes into effect on April 1, 2011.

- General Policy Statement
- Definitions
- Authorities
- Purpose and Scope
- Background
- Specific Policy Statements
- Roles and Responsibilities
- References
- Appendices

General Policy Statement

1. It is the policy of the Canada Border Services Agency (CBSA) to provide a safe, healthy and violence-free work place by dedicating sufficient attention, resources and time to address factors that contribute to work place violence. These factors include, but are not limited to, bullying, teasing, and abusive and other aggressive behaviour. It is the policy of the CBSA to prevent and protect against violence in the work place. Further, the CBSA will inform employees about factors contributing to work place violence and will provide employees with clear procedures to follow should they encounter violence in the work place. Finally, the CBSA commits to assisting employees who have been exposed to work place violence.

Definitions

2. **Competent Person** – means a person who is impartial and is seen by the parties to be impartial; has knowledge, training, and experience in issues relating to work place violence; and has knowledge of relevant occupational health and safety legislation. For the purpose of this policy, the competent person is defined as the Regional Security Manager.
3. **Employee** – means a person employed by an employer [Subsection 122.(1) of the *Canada Labour Code*, Part III]. For the purposes of this policy, an employee includes all CBSA employees (indeterminate and determinate), casuals, students, Border Services Officer recruits, persons hired through temporary agencies, and consultants and contractors for whom an employer/employee relationship can be established.
4. **Employee Assistance Program (EAP) / Critical Incident Stress Management (CISM)** – EAP is a program designed to assist employees and their families by mitigating the impact of a critical incident and accelerating the recovery of those experiencing a reaction to a critical incident. The EAP promotes well-being at the CBSA. It is a confidential and free service that is available to all CBSA employees and their dependents. The CISM program responds to sudden and unusual events that can potentially overwhelm the coping skills of an individual or group.

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5. **Informal Conflict Management System (ICMS)** – an alternative approach to the prevention, management, and early resolution of conflict through a variety of means, such as alternative dispute resolution or other collaborative processes. It emphasizes collaborative problem-solving approaches and dialogue between those involved. It encourages a shift, when appropriate, from formal rights-based recourses to less formal interest-based processes such as dialogue, facilitation, and mediation.
6. **Person** – those individuals who work in the work place as well as individuals with whom the employee may come into contact while working, such as clients and the general public.
7. **Work place** – is defined in the *Canada Labour Code* as “any place where an employee is engaged in work for the employee’s employer”. This includes any area where an employee is making a delivery for the employer, any location where an employee is providing a service under the employer’s direction, and any mode of transportation (e.g., train, plane) where the employee is travelling in the course of business. It also includes attendance at conferences, seminars and training. It does not include parking lots not controlled by the employer, employees travelling to and from the work place outside working hours or locations hosting non-mandatory recreational activities that may be sponsored by the employer such as a company picnic or golf tournament.
8. **Work Place Violence** – constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

Authorities

9. *Canada Labour Code*, Part II - Paragraph 125.(1)(z.16)
10. *Canada Occupational Health and Safety Regulations* - Part XX – Violence Prevention in the Work Place

Purpose and Scope

11. The purpose of this policy is to establish a framework to prevent and protect employees from violence in the work place.
12. This policy applies to all employees, as defined by the Definitions section.
13. This policy will ensure that those who are subjected to violence in the work place are informed of the procedures for reporting, investigation and recourse and that assistance/counselling is available.
14. This policy is meant to complement, not replace, existing resources and should be read in conjunction with the CBSA Comptrollership Manual, Security Volume, Chapter 15: Reporting of Security Incidents; Chapter 26: Abuse, Threats, Stalking and Assaults Against Employees; Chapter 27: Internal Investigations into Alleged or Suspected Employee Misconduct; Policy on Use of Force Incident Reporting and Investigation; the Employee Assistance Program (EAP) Guidelines; the CISM Guidelines and Standard Operating Procedures; the CBSA Code of Conduct; and the ICMS Policy & Program Framework.

Background

15. The amendments to the *Canada Labour Code* that came into force on September 30, 2000, resulted in the increased responsibility for work place parties (employers and employees) to address occupational health and safety issues jointly in a more efficient and effective manner. Consequently, work place parties work together to ensure a healthy and safe working environment for all employees.
16. The *Canada Labour Code* states "the employer shall take the prescribed steps to prevent and protect against violence in the work place" [S. 125.(1)(z.16)]. The "prescribed steps" are outlined in the *Violence Prevention in the Work Place Regulation*.
17. This Regulation aims to improve employee safety by giving both employers and employees the tools needed to prevent and protect against work place violence.

Specific Policy Statements

18. All potential situations or occurrences of work place violence will be reported in accordance with the CBSA Comptrollership Manual, Security Volume, Chapter 15 – Reporting of Security Incidents and Chapter 26 – Abuse, Threats, Stalking and Assaults against Employees and, if applicable, Part XV of the Canada Occupational Health and Safety Regulation – Hazardous Occurrence Investigation, Recording and Reporting.
19. All reported incidents will be investigated in accordance with the applicable chapter of the Security Volume.
20. All reports involving work place violence must be sent to the Security and Professional Standards Directorate at Headquarters by the Regional Security Office using the Security Incident Report Form – BSF152.
21. If a Hazardous Occurrence Investigation Report (LAB1070) is also required, it must be sent to the Regional Occupational Health and Safety (OHS) Advisor after it is completed in accordance with existing procedures.
22. One of the ways the CBSA will assist employees who have been exposed to work place violence is through the Employee Assistance Program (EAP). EAP is available 24/7 in accordance with the Employee Assistance Program Guidelines and includes CISM defusing and debriefing following a critical incident in accordance with the Critical Incident Stress Management Guidelines and Standard Operating Procedures.
23. The Informal Conflict Management System (ICMS) process will continue to be available to all CBSA employees with the goal of fostering a respectful workplace by preventing, effectively managing, and promptly resolving conflict that may arise in the workplace. It is an important step toward preventing violence between workplace parties.
24. The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors (see Appendix C).
25. Emergency response to situations of violence will be in accordance with the Building Emergency Plan for each facility.
26. Violence Prevention in the Work Place awareness training will be required for all CBSA employees. Refresher training will be required every three years. Records of training will be maintained in the Corporate Administration System (CAS).

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27. The CBSA will not tolerate employees threatening, coercing or intimidating each other and will promptly and thoroughly investigate all reports of work place violence both internal (employee/employee) or external (employee/non-employee). Any disciplinary action taken will be in accordance with the *CBSA Discipline Policy*.
28. This policy and all aspects of the CBSA's Violence Prevention Program are accomplished in consultation with the Policy Health and Safety Committee.
29. The Policy Health and Safety Committee will continue to receive security incident reports on a quarterly basis. These reports include information on security incidents in four key areas – Assaults; Threats of Bodily Harm; Bomb Threats; and Suspicious Packages. Incidents of work place violence will be included, where not prohibited by law.

LIMITATION

30. When consulting with the Policy Health and Safety Committee or the Work Place Health and Safety Committee/Representative, management shall not disclose information whose disclosure is prohibited by law or could reasonably be expected to threaten the safety of individuals. The identity of those involved in any incidents of work place violence will not be revealed without their consent.

Roles and Responsibilities

31. The responsibility for interpretation of this policy and the Violence Prevention Program rests with the Director General, Labour Relations and Compensation Directorate.

Employees will:

32. Comply with this policy;
33. Attend training mandated under this policy;
34. Notify their supervisor of any disputes they have with other employees before the situation degenerates into violence. If the dispute is with the immediate supervisor, notify the next level of management or the Regional Security Manager;
35. Report potential situations or occurrences of work place violence to their supervisor;
36. Follow building emergency procedures; and
37. Cooperate with any person carrying out duties associated with this policy.

Supervisors will:

38. Comply with this policy and ensure all employees comply with this policy;
39. Ensure that their Building Emergency Plans are current and that step-by-step instructions for emergency notification are posted in the work place;
40. Ensure employee attendance at training that is mandated under this policy;
41. Evaluate the need for additional/refreshers training on building emergency procedures;
42. Be diligent in the recognition of employee behaviour that could lead to violence;
43. Take all appropriate immediate actions to protect employees who have been exposed to violence;
44. Ensure appropriate reporting and investigation of work place violence incidents and potential incidents that are reported to them as per the CBSA Comptrollership Manual, Security Volume, specifically Chapters 15, 26, and 27 and Part XV of the Canada Occupational Health and Safety Regulations;
45. Ensure appropriate reports are completed and distributed;
46. Arrange for a Physical Threat and Risk Assessment should a previously unforeseen work place violence hazard be identified in order to implement appropriate controls;

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- 47. Inform the work place health and safety committee/representative of all instances of work place violence, except where prohibited by law. The identity of those involved will not be revealed without their consent; and
- 48. Keep a record of all reports completed by a competent person.

District/Regional Directors will:

- 49. Participate in identifying violence prevention needs for facilities; and
- 50. Actively support and assist managers/supervisors in complying with this policy.

Comptrollership Branch**Security and Professional Standards Directorate (SPSD) will:**

- 51. Analyze incidents of work place violence where required and prepare recommendations to management;
- 52. Participate in identifying violence prevention needs for facilities within Headquarters;
- 53. Actively support and assist managers/supervisors in complying with the policy;
- 54. Assist with the investigation and analysis of incidents of violence or potential incidents of violence as required;
- 55. Provide advice and guidance to the regions regarding the completion of Physical Threat and Risk Assessments;
- 56. Provide periodic reports on work place violence incidents to the Policy Health and Safety Committee; and
- 57. Fulfill additional responsibilities relative to violence in the work place as detailed in the CBSA Security Volume.

Regional Security Managers will:

- 58. Assist regional management with preventing and protecting against work place specific threats that may increase the risk for work place violence;
- 59. Provide advice to regional management on the applicable chapters of the CBSA Security Volume;
- 60. Conduct or direct the conduct of investigations into incidents of work place violence;
- 61. Ensure that the Security and Professional Standards Directorate at Headquarters are advised of any significant incidents;
- 62. Ensure that all reports involving work place violence are sent to the SPSP at Headquarters; and
- 63. Conduct, or direct the conduct of, Physical Threat and Risk Assessments.

Infrastructure and Environmental Operations will:

- 64. Ensure that methods for the prevention of violence are considered during construction and/or renovation of a CBSA facility; and
- 65. Provide statistical reporting of security incidents to the Policy Health and Safety Committee.

Human Resources Branch**Employee Assistance Program will:**

- 66. Promote well-being at the CBSA;
- 67. Provide a confidential and free service that is accessible to all CBSA employees and their families;
- 68. Ensure that all employees are aware of the EAP and CISM services and how to access them; and
- 69. Provide EAP and CISM services as per the EAP Guidelines and CISM Guidelines and Standard Operating Procedures.

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Informal Conflict Management System (ICMS) will:

- 70. Ensure ICMS services are available to all CBSA employees; and
- 71. Promote the ICMS, provide information and increase awareness of the ICMS program.

Occupational Health and Safety Division, Labour Relations and Compensation Directorate (LRCD) will:

- 72. Monitor compliance with this policy;
- 73. Ensure this policy remains current by reviewing it at least once every three years and updating it as changes are required;
- 74. Provide advice, guidance and interpretation of the *Violence Prevention in the Work Place Regulation* to employees, management, and the Regional OHS Advisors at the CBSA;
- 75. Develop, in consultation with key stakeholders, Violence Prevention in the Work Place awareness training for all employees; and
- 76. Review the Violence Prevention in the Work Place awareness training at least once every three years or as new information becomes available or if there is a change in the work place.

Regional Occupational Health and Safety Advisors will:

- 77. Provide advice, guidance and interpretation of the Violence Prevention in the Work Place Regulation to employees and management within their respective region; and
- 78. Ensure that the Occupational Health and Safety Division, LRCD is advised of any significant incidents.

References

- o HRSDC-Labour Program – Guide to Violence Prevention in the Work Place
- o Canada Centre for Occupational Health and Safety
- o Comptrollership Manual – Security Volume – Chapter 15
- o Comptrollership Manual – Security Volume – Chapter 26
- o Comptrollership Manual – Security Volume – Chapter 27
- o CBSA Employee Assistance Program (EAP) Guidelines
- o CBSA CISM Guidelines and Standard Operating Procedures
- o CBSA ICMS Policy & Program Framework
- o CBSA Code of Conduct
- o NJC Occupational Health and Safety Directive
- o TBS Policy on Prevention and Resolution of Harassment in the Workplace

Inquiries

Questions concerning this policy should be directed to CBSA's Occupational Health and Safety Division at the following mailbox: CBSA/ASFC, OHS-SST.

Appendix A**Identification of Factors that Contribute to Work Place Violence**

The *Violence Prevention in the Work Place Regulation* requires the CBSA to identify all factors that contribute to work place violence. Being proactive in identifying factors allows for their assessment and control prior to the factors actually generating violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with identifying factors that contribute to work place violence.

To understand and control work place violence, we must consider all of the possible sources of violent behaviour. Work place violence can arise from:

- A person inside the work place, such as a co-worker, a manager, or an employee;
- A person related to the function of the work place, such as a traveller, client or contractor;
- A person with an indirect relationship with the work place, such as an estranged spouse or partner, or a former employee; and
- A person who is unrelated to the organization, such as a person with criminal intent.

In an effort to determine which CBSA activities may increase the risk for work place violence, a review of industry research was undertaken as well as a review of CBSA's Security Incident Reports for a period of 2004-2008 and Hazardous Occurrence Investigation Reports (HOIRs) for the period of 2007-2008. These reports are submitted by employees and supervisors. This list is not meant to be exhaustive in nature, but is intended to highlight factors specific to the CBSA.

- Working with the public
- Carrying out inspection and enforcement duties
- Working with unstable or volatile persons
- Working in small numbers
- Working in isolated or low traffic areas
- Working in high traffic areas
- Working in a 24/7 operation
- Meeting clients in their homes, in the community, or at their place of business
- Handling money, valuables
- Driving a vehicle as a job requirement
- Working with crisis and emergency situations
- Interacting with private sector employees in the following locations:
 - Sufferance/queens/bonded warehouses
 - Container examination facilities
 - Marine ports
 - Other facilities where CBSA maintains a presence
- Geographical location of our work places

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Appendix B

Assessment of Factors that Contribute to Work Place Violence

The *Violence Prevention in the Work Place Regulation* requires the CBSA to assess the potential for work place violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with assessing factors that contribute to work place violence.

Given that employees of the CBSA, especially those in an enforcement role, perform their duties in situations coinciding with the specific factors referenced in the previous Appendix, it is recognized by management and employees that the potential for violence exists on a daily basis and is considered a normal condition of employment for those in an enforcement role. The nature of our work activities includes the enforcement of over 90 Acts and Regulations at approximately 1200 service points in Canada. We also have employees stationed at various Missions around the world. It is foreseeable that some of our clients are not going to be content with the direction our employees must provide.

Certain work factors, processes, and interactions can put people at increased risk from work place violence. By nature of their work, CBSA employees may be exposed to situations involving abuse, threats or intimidation. These are all factors that increase the risk for work place violence.

As an organization, the CBSA has recognized this and put preventative measures in place to protect our employees. More details on these measures are found in Appendix D.

The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors. Information about threat and risk assessments and the process for requesting one may be found at Appendix C. If the threat and risk assessment demonstrates the existence of a violence factor that must be controlled, management will address this factor with the participation of the work place health and safety committee who will assist in the assessment of the hazard and recommend appropriate controls.

Appendix C

Physical Threat and Risk Assessments

Should an unforeseen work place violence hazard be identified, it must be promptly assessed in order to protect against it. The assessment will take place in the form of a Physical Threat and Risk Assessment.

Physical Threat and Risk Assessments (TRA) are used to identify the existence of residual risk and to provide a basis for how to mitigate that risk with physical security safeguards.

The physical TRA utilizes the standard approach for TRA's (RCMP / CSE Harmonized TRA methodology), with particular attention being paid to individuals who may commit violence (threat agent), personnel including clients (assets being protected), and conditions that could allow for events to escalate and persist (vulnerabilities).

The TRA can be conducted to assess whether or not an immediate response to a situation is warranted and, if so, the best course of action in terms of containing, minimizing and returning to normal operations following an incident. It will generally involve the Manager and, depending upon the specific case, HR (OHS, EAP) and Security specialists who can speak to the controls in place within the environment. It must be noted that information may be solicited from other groups. The goal of this exercise is to determine the most appropriate course of action--ranging from no action being required through to intervention by police.

Process for requesting a Physical Threat and Risk Assessment:

For assistance with Physical Threat and Risk Assessments, management should contact their regional security manager. Depending on the complexity of the situation, the regional security manager may forward a request for assistance to the Security and Professional Standards Directorate at Headquarters.

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Appendix D

Controls to Eliminate or Minimize Work Place Violence

After the risk factors have been assessed, necessary controls must be developed and implemented. As required by the *Canada Labour Code*, the CBSA will control risk factors for violence in accordance with the hierarchy of controls, which are elimination, reduction, and personal protective equipment. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will recommend controls to management to address work place violence risk factors.

A control or preventive measure must not create a new hazard. For example, if a locked security door to prevent unauthorized access is installed, it must meet the applicable fire protection requirements in case of an emergency.

When addressing controls for work place violence, it is necessary to consider human behaviour as a factor. While we can often predict a response to a certain situation, human behaviour can be spontaneous or unpredictable, making it difficult to truly eliminate risk. Along with the physical security notions implemented by the CBSA, supervisors must be cognizant in recognizing employee behaviour that could lead to a violent act. Managers are encouraged to support their employees by letting them know that there is an EAP available to them and their families and encourage them to go for support (but cannot insist that they go as EAP is voluntary). Furthermore, EAP provides advisory services for managers and union representatives to discuss how to initiate this kind of conversation with the employee.

The CBSA has taken many steps to minimize the probability of violence occurring in our work places. The following are the current controls in place at the CBSA:

Eliminate/Minimize Violence

- Threat/Risk Assessments
- Restricted Access
- Controlled Access/Card Access
- Facility Design
- Security Guards / Security Zones
- Key pad locks
- Design considerations - ditches/bollards
- Portable personal alarms
- Communication equipment
 - Radios
 - Telephones/Satellite telephones
 - Computers
- Alarms in Hearing Rooms
- Signage
- Training (see Appendix G)
- Policies/Procedures (i.e. Policy on the Use of Force, Enforcement Manual, etc.)
- Emergency Plans
- Referrals to EAP
- Security screening for employees and contractors

Protective and Defensive Equipment

- Protective vest
- Baton
- OC Spray
- Handcuffs

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- Duty Firearm

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Appendix E

Response to Violence – Emergency Procedures

Response to situations of violence will be in accordance with the Building Emergency Plan for each facility.

As required by security policy, employees will be trained on the emergency procedures to follow for their facility. Step-by-step instructions are required to be posted at a readily accessible location in the work place detailing emergency notification procedures.

Management's decision of whether or not to notify the police must take into consideration the nature of the violence and the concerns of the employee(s) who has (have) reported the incident of violence. This decision must be made in consultation with the affected employee(s).

Where an investigation is conducted by the police, notifying the work place health and safety committee/representative will depend on whether the police prohibit such notification by law. The identity of persons involved will not be disclosed without their consent.

Management will assess the need for a de-briefing of the situation with the employees involved and with members of the work place health and safety committee, as designated by the Co-chairs. Management will also provide employees who are involved in a situation of work place violence with assistance required, including referrals to EAP/CISM.

Appendix F**Notification and Investigation**

Employees are required to promptly report potentially violent situations and occurrences of work place violence to their supervisor without delay. Should the work place violence be between the employee and his/her supervisor, the employee will report the occurrence to the immediate supervisor of the supervisor involved. Investigations are conducted in accordance with existing security policies.

Incidents (i.e. abuse, threats, stalking, assaults, demonstrations, etc) must be reported as stipulated in the Security Volume, Chapter 15 - Reporting of Security Incidents.

The Regional Security Officer or the Security and Professional Standards Directorate (SPSD) will provide advice, action and/or investigation. Depending on the incident, the SPSP will conduct, or cause to be conducted, an investigation that is objective and completed by a qualified competent person.

The *Violence Prevention in the Work Place Regulation* requires management to respond to reports of work place violence or alleged work place violence and attempt to resolve the matter with the employee as soon as possible. If the matter is unresolved, the manager must appoint a competent person to investigate the work place violence [see Exception below]. The competent person will investigate and provide a written report to the manager with conclusions and recommendations.

Chapters 15 and 27 of the Security Volume allow for the qualified "competent" person(s) investigating to make recommendations to management concerning appropriate corrective measures to prevent a reoccurrence as much as possible. Management is responsible for ensuring corrective measures are applied.

Exception:

A formal investigation by a competent person is not required if:

- (a) the work place violence was caused by a person other than an employee;
- (b) it is reasonable to consider that engaging in the violent situation is a normal condition of employment; and
- (c) the employer has effective procedures and controls in place, involving employees to address work place violence.

However, the obligation remains for management to attempt to resolve the matter with the employee as soon as possible.

Reports

In addition to the Security Incident Report, the following reports may be required to be completed, depending on the circumstances:

- Use of Force Report (BSF 586) – required when an officer uses force or when an officer implies with defensive equipment that force will be used.
- CBSA Hazardous Occurrence Investigation Report (LAB 1070) – required when there is an incident, a minor or disabling injury, or when emergency procedures are initiated.

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Appendix G

Training of Employees

Basic violence prevention in the work place awareness training will be provided to all CBSA employees. In addition to this, employees who work in an enforcement role attend Control and Defensive Tactics training and, when required for their work, the Duty Firearm Course.

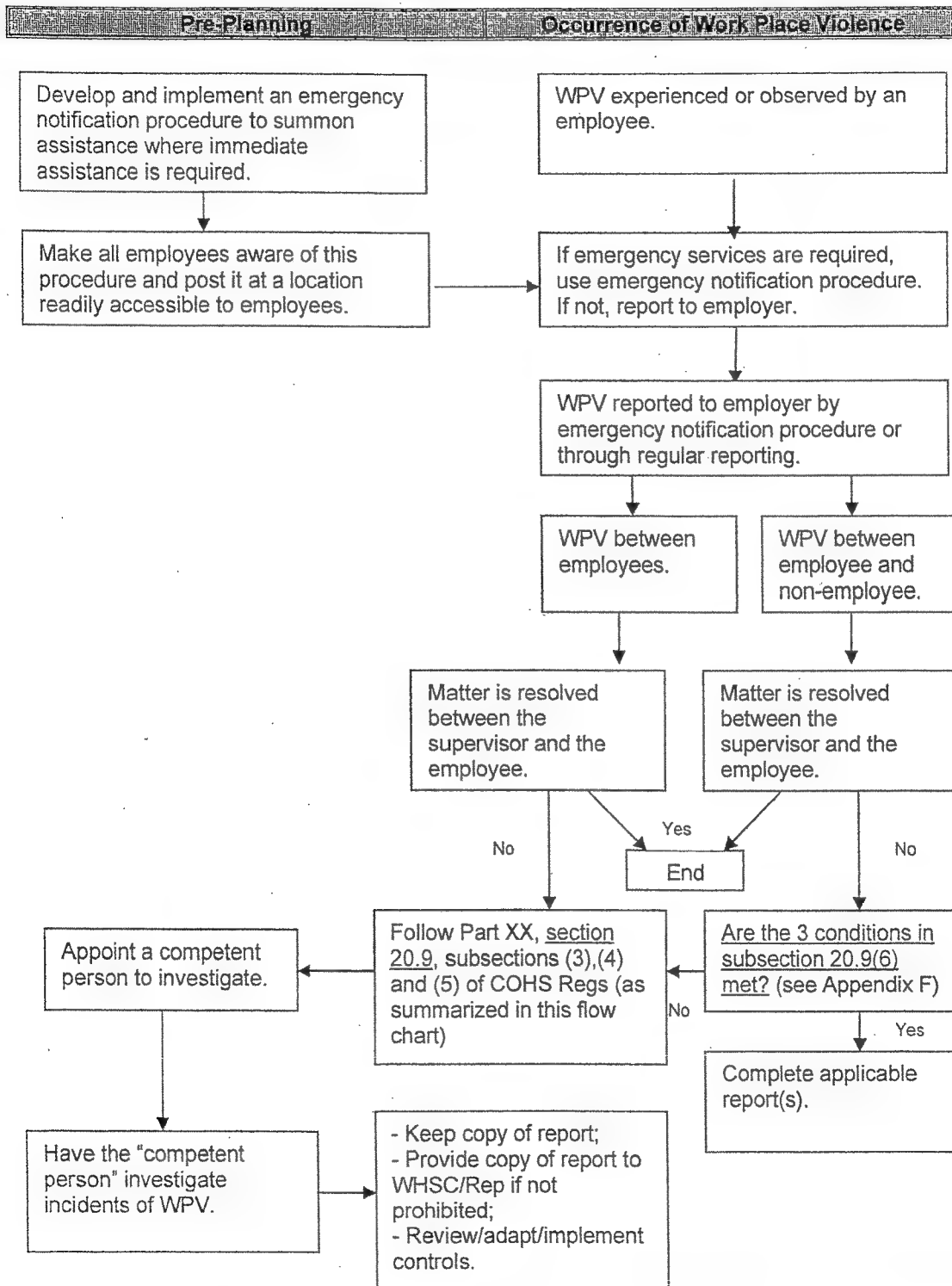
Violence prevention in the work place awareness training will be reviewed once every three years or sooner if there is a change in respect of the risk of work place violence or when new information on the risk of work place violence becomes available.

The following is a list of training related to work place violence currently available at CBSA:

- Violence Prevention in the Work Place
- Control and Defensive Tactics
- Duty Firearms Course
- Security Awareness Training
- Employee Assistance Program Information Sessions
- Coping with Stress
- Managing Psychological Health: A Salient Management Challenge in the Early 21st Century
- Moving to an Armed Workforce: Workshop for Managers
- Critical Incident Stress Management Awareness Sessions for Managers
- Informal Conflict Management System (ICMS) Workshops
 - Generations
 - Power of Words
 - ICMS @ Work
 - Difficult Conversations

Appendix H

Flow Chart – Pre-Planning for and Investigation into Work Place Violence (WPV)



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Appendix I

Sample Emergency Notification Procedures

Employees need to be made aware of the emergency notification procedures applicable to them and a text of those procedures are required to be posted in a location readily accessible to employees. In most cases, this information will be taken directly from the Building Emergency Plan.

The following is a sample of emergency notification procedures that may be used:

IN THE EVENT YOU EXPERIENCE OR OBSERVE A WORK PLACE VIOLENCE OCCURRENCE

- Protect yourself and/or co-workers from injury
- If an emergency exists, call 911
- Notify your supervisor
- Follow the Policy for Reporting Security Incidents

The following contact information could also be included:

- Municipal emergency services (police, fire, ambulance)
- Management contact information
- Regional security contacts
- Regional Emergency Operations Centre
- Work Place Health and Safety Committee members
- Other tenants of the building
- Tenant and property managers
- Bridge/Tunnel/Airport Authorities
- US Customs and Border Patrol

Article 19

No Discrimination

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.

19.02

- a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.
- b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

19.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with discrimination. The selection of the mediator will be by mutual agreement.

19.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

Article 20

Sexual Harassment

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from sexual harassment, and agree that sexual harassment will not be tolerated in the workplace.

20.02

- a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.
- b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

20.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with sexual harassment. The selection of the mediator will be by mutual agreement.

20.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

Article 28

Overtime

Excluded Provisions

28.01 *Compensation under this Article shall not be paid for overtime worked by an employee at courses, training sessions, conferences and seminars unless the employee is required to attend by the Employer.*

28.02 General

- a. An employee is entitled to overtime compensation under clauses 28.04 and 28.05 for each completed period of fifteen (15) minutes of overtime worked by him or her when:
 - i. the overtime work is authorized in advance by the Employer or is in accordance with standard operating instructions;
and
 - ii. the employee does not control the duration of the overtime work.
- b. Employees shall record starting and finishing times of overtime work in a form determined by the Employer.
- c. For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked.
- d. Payments provided under the overtime, designated paid holidays and standby provisions of this Agreement shall not be pyramided, that is, an employee shall not be compensated more than once for the same service.

28.03 Assignment of Overtime Work

- a. Subject to operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.
- b. Except in cases of emergency, call-back or mutual agreement with the employee, the Employer shall, wherever possible, give at least four (4) hours' notice of any requirement for overtime work.

28.04 Overtime Compensation on a Workday

Subject to paragraph 28.02(a):

- a. An employee who is required to work overtime on his or her scheduled workday is entitled to compensation at time and one-half (1 1/2) for the first seven decimal five (7.5) consecutive hours of overtime worked and at double (2) time for all overtime hours worked in excess of seven decimal five (7.5) consecutive hours of overtime in any contiguous period.
- b. If an employee is given instructions during the employee's workday to work overtime on that day and reports for work at a time which is not contiguous to the employee's scheduled hours of work, the employee shall be paid a minimum of two (2) hours' pay at straight-time rate or for actual overtime worked at the applicable overtime rate, whichever is the greater.
- c. An employee who is called back to work after the employee has completed his or her work for the day and has left his or her place of work, and who returns to work shall be paid the greater of:
 - i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back, to a maximum of eight (8) hours' compensation in an eight (8) hour period; such maximum shall include any reporting pay pursuant to paragraph (b) or its alternate provision,
or
 - ii. compensation at the applicable overtime rate for actual overtime worked,

provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

- d. The minimum payment referred to in subparagraph (c)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 60.05 or 60.06.

28.05 Overtime Compensation on a Day of Rest

Subject to paragraph 28.02(a):

- a. An employee who is required to work on a first (1st) day of rest is entitled to compensation at time and one-half (1 1/2) for the first (1st) seven decimal five (7.5) hours and double (2) time thereafter.
- b. An employee who is required to work on a second (2nd) or subsequent day of rest is entitled to compensation at double (2) time (second or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest).
- c. When an employee is required to report for work and reports on a day of rest, the employee shall be paid the greater of:
 - i. compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting, to a maximum of eight (8) hours' compensation in an eight (8) hour period;
or
 - ii. compensation at the applicable overtime rate.
- d. The minimum payment referred to in subparagraph (c)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 60.05.

28.06 Compensation in Cash or Leave With Pay

- a. Overtime shall be compensated in cash, except that, upon request of an employee and with the approval of the Employer, overtime may be compensated in equivalent leave with pay.
- b. The Employer shall endeavour to pay cash overtime compensation by the sixth (6th) week after which the employee submits the request for payment.
- c. The Employer shall grant compensatory leave at times convenient to both the employee and the Employer.
- d. Compensatory leave with pay not used by the end of a twelve (12) month period, to be determined by the Employer, will be paid for in cash at the employee's hourly rate of pay, as calculated from the classification prescribed in the certificate of appointment of his or her substantive position at the end of the twelve (12) month period.

28.07 Meals

- a. An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount of ten dollars (\$10) except where free meals are provided.
- b. When an employee works overtime continuously extending four (4) hours or more beyond the period provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount of ten dollars (\$10) for each additional four (4) hour period of overtime worked thereafter except where free meals are provided.
- c. Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.
- d. Meal allowances under this clause shall not apply to an employee who is in travel status, which entitles the employee to claim expenses for lodging and/or meals.

28.08 Transportation Expenses

- a. When an employee is required to report for work and reports under the conditions described in paragraphs 28.04(b), (c) and 28.05(c) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:
 - i. mileage allowance at the rate normally paid to an employee when authorized by the Employer to use his or her automobile, when the employee travels by means of his or her own automobile;
or
 - ii. out-of-pocket expenses for other means of commercial transportation.
- b. Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than the employee's normal place of work, time spent by the employee reporting to work or returning to the employee's residence shall not constitute time worked.

Part IV: Leave Provisions

Article 33 Leave - General

33.01

- a. When an employee becomes subject to this Agreement, his or her earned daily leave credits shall be converted into hours. When an employee ceases to be subject to this Agreement, his or her earned hourly leave credits shall be reconverted into days, with one day being equal to seven decimal five (7.5) hours.
- b. Earned leave credits or other leave entitlements shall be equal to seven decimal five (7.5) hours per day.
- c. When leave is granted, it will be granted on an hourly basis and the number of hours debited for each day of leave shall be equal to the number of hours of work scheduled for the employee for the day in question.
- d. Notwithstanding the above, in Article 46, Bereavement Leave With Pay, a "day" will mean a calendar day.

33.02 Except as otherwise specified in this Agreement:

- a. where leave without pay for a period in excess of three (3) months is granted to an employee for reasons other than illness, the total period of leave granted shall be deducted from "continuous employment" for the purpose of calculating severance pay and from "service" for the purpose of calculating vacation leave;
- b. time spent on such leave which is for a period of more than three (3) months shall not be counted for pay increment purposes.

33.03 An employee is entitled, once in each fiscal year, to be informed, upon request, of the balance of his or her vacation and sick leave credits.

33.04 The amount of earned but unused leave with pay credited to an employee by the Employer at the time when this Agreement is signed, or at the time when the employee becomes subject to this Agreement shall be retained by the employee.

33.05 An employee shall not be granted two (2) different types of leave with pay or monetary remuneration in lieu of leave in respect of the same period of time.

33.06 An employee who, on the day that this Agreement is signed, is entitled to receive furlough leave, that is, five (5) weeks' leave with pay upon completing twenty (20) years of continuous employment, retains his or her entitlement to furlough leave, subject to the conditions respecting the granting of such leave that are in force on the day that this Agreement is signed.

33.07 An employee is not entitled to leave with pay during periods he or she is on leave without pay or under suspension.

33.08 In the event of termination of employment for reasons other than incapacity, death or lay-off, the Employer shall recover from any monies owed the employee an amount equivalent to unearned vacation and sick leave taken by the employee, as calculated from the classification prescribed in the employee's certificate of appointment on the date of the termination of the employee's employment.

33.09 An employee shall not earn leave credits under this Agreement in any month for which leave has already been credited to him or her under the terms of any other collective agreement to which the Employer is a party or under other rules or regulations of the Employer.

33.10 When an employee who is in receipt of a special duty allowance or an extra duty allowance is granted leave with pay, the employee is entitled during the employee's period of leave to receive the allowance if the special or extra duties in respect of which the employee is paid the allowance were assigned to the employee on a continuing basis, or for a period of two (2) or more months prior to the period of leave.

Article 34

Vacation Leave With Pay

34.01 The vacation year shall be from April 1 to March 31 inclusive of the following calendar year.

Accumulation of Vacation Leave Credits

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34.02 For each calendar month in which an employee has earned at least seventy-five (75) hours' pay, the employee shall earn vacation leave credits at the rate of:

- a. nine decimal three seven five (9.375) hours until the month in which the anniversary of the employee's eighth (8th) year of service occurs;
- b. twelve decimal five (12.5) hours commencing with the month in which the employee's eighth (8th) anniversary of service occurs;
- c. thirteen decimal seven five (13.75) hours commencing with the month in which the employee's sixteenth (16th) anniversary of service occurs;
- d. fourteen decimal four (14.4) hours commencing with the month in which the employee's seventeenth (17th) anniversary of service occurs;
- e. fifteen decimal six two five (15.625) hours commencing with the month in which the employee's eighteenth (18th) anniversary of service occurs;
- f. sixteen decimal eight seven five (16.875) hours commencing with the month in which the employee's twenty-seventh (27th) anniversary of service occurs;
- g. eighteen decimal seven five (18.75) hours commencing with the month in which the employee's twenty-eighth (28th) anniversary of service occurs.

34.03

- a. For the purpose of clause 34.02 only, all service within the public service, whether continuous or discontinuous, shall count toward vacation leave except where a person who, on leaving the public service, takes or has taken severance pay. However, the above exception shall not apply to an employee who receives severance pay on lay-off and is reappointed to the public service within one year following the date of lay-off.
- b. Notwithstanding paragraph (a) above, an employee who was a member of one of the bargaining units listed below on the date of signing of the relevant collective agreement or an employee who became a member of those bargaining units between the date of signing of the relevant collective agreement and May 31, 1990 shall retain, for the purposes of "service" and of establishing his or her vacation entitlement pursuant to this clause, those periods of former service which had previously qualified for counting as continuous employment, until such time as his or her employment in the public service is terminated.

Bargaining Units	Dates of Signing
AS, IS, PM	May 17, 1989
CM, CR, DA, OE, ST	May 19, 1989
WP	November 24, 1989

34.04 An employee is entitled to vacation leave with pay to the extent of the employee's earned credits, but an employee who has completed six (6) months of continuous employment is entitled to receive an advance of credits equivalent to the anticipated credits for the current vacation year.

Scheduling of Vacation Leave With Pay

34.05

- a. Employees are expected to take all their vacation leave during the vacation year in which it is earned.
- b. Subject to the following subparagraphs, the Employer reserves the right to schedule an employee's vacation leave but shall make every reasonable effort:
 - i. to provide an employee's vacation leave in an amount and at such time as the employee may request;
 - ii. not to recall an employee to duty after the employee has proceeded on vacation leave;
 - iii. not to cancel or alter a period of vacation or furlough leave which has been previously approved in writing.

34.06 The Employer shall give an employee as much notice as is practicable and reasonable of approval, denial, alteration or cancellation of a request for vacation or furlough leave. In the case of denial, alteration or cancellation of such leave, the Employer shall give the reason therefor in writing, upon written request from the employee.

34.07 Where, in respect of any period of vacation leave, an employee:

- a. is granted bereavement leave,
or
- b. is granted leave with pay because of illness in the immediate family,
or
- c. is granted sick leave on production of a medical certificate,

the period of vacation leave so displaced shall either be added to the vacation period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

34.08 Advance Payments

- a. The Employer agrees to issue advance payments of estimated net salary for vacation periods of two (2) or more complete weeks, provided a written request for such advance payment is received from the employee at least six (6) weeks prior to the last payday before the employee's vacation period commences.
- b. Provided the employee has been authorized to proceed on vacation leave for the period concerned, pay in advance of going on vacation shall be made prior to the commencement of leave. Any overpayment in respect of such pay advances shall be an immediate first charge against any subsequent pay entitlements and shall be recovered in full prior to any further payment of salary.

34.09 Recall From Vacation Leave

- a. Where an employee is recalled to duty during any period of vacation or furlough leave, the employee shall be reimbursed for reasonable expenses that the employee incurs:
 - i. in proceeding to the employee's place of duty,
and
 - ii. in returning to the place from which the employee was recalled if the employee immediately resumes vacation upon completing the assignment for which the employee was recalled,

after submitting such accounts as are normally required by the Employer.

- b. The employee shall not be considered as being on vacation leave or furlough leave during any period in respect of which the employee is entitled under paragraph (a) to be reimbursed for reasonable expenses incurred by the employee.

34.10 Cancellation or Alteration of Vacation Leave

When the Employer cancels or alters a period of vacation or furlough leave which it has previously approved in writing, the Employer shall reimburse the employee for the non-returnable portion of vacation contracts and reservations made by the employee in respect of that period, subject to the presentation of such documentation as the Employer may require. The employee must make every reasonable attempt to mitigate such losses.

Carry-Over and/or Liquidation of Vacation Leave

34.11

- a. Where, in any vacation year, an employee has not been granted all of the vacation leave credited to him or her, the unused portion of his or her vacation leave, to a maximum of two hundred and sixty-two decimal five (262.5) hours of credits, shall be carried over into the following vacation year. All vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours shall be automatically paid in cash at his or her daily rate of pay, as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.
- b. Notwithstanding paragraph (a), if, on March 31, 1999, or on the date an employee becomes subject to this Agreement after March 31, 1999, an employee has more than two hundred and sixty-two decimal five (262.5) hours of *unused* vacation leave credits, a minimum of seventy-five (75) per year shall be granted or paid in cash by March 31 of each year, commencing on March 31, 2000, until all vacation leave credits in excess of two hundred and sixty-two decimal five (262.5) hours have been liquidated. Payment shall be in one instalment per year and shall be at the employee's daily rate of pay, as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on March 31 of the applicable previous vacation year.

34.12 During any vacation year, upon application by the employee and at the discretion of the Employer, earned but unused vacation leave credits in excess of one hundred and twelve decimal five (112.5) hours may be paid in cash at the employee's daily rate of pay, as calculated from the classification prescribed in the certificate of appointment of the employee's substantive position on March 31 of the previous vacation year.

Leave to Employee's Credit When Employment Terminates

34.13 When an employee dies or otherwise ceases to be employed, the employee's estate or the employee shall be paid an amount equal to the product obtained by multiplying the number of days of earned but unused vacation and furlough leave to the employee's credit by the daily rate of pay, as calculated from the classification prescribed in the certificate of appointment on the date of the termination of employment.

34.14 Notwithstanding clause 34.13, an employee whose employment is terminated for cause pursuant to paragraph 12(1)(e) of the *Financial Administration Act* by reason of abandonment of his or her position is entitled to receive the payment referred to in clause 34.13, if he or she requests it within six (6) months following the date upon which his or her employment is terminated.

34.15 Where the employee requests, the Employer shall grant the employee his or her unused vacation leave credits prior to termination of employment if this will enable the employee, for purposes of severance pay, to complete the first (1st) year of continuous employment in the case of lay-off, and the tenth (10th) year of continuous employment in the case of resignation.

34.16 Appointment to a Separate Agency

Notwithstanding clause 34.13, an employee who resigns to accept an appointment with an organization listed Schedule V of the *Financial Administration Act* may choose not to be paid for unused vacation and furlough leave credits, provided that the appointing organization will accept such credits.

34.17 Appointment From a Separate Agency

The Employer agrees to accept the unused vacation and furlough leave credits, up to a maximum of two hundred and sixty-two decimal five (262.5) hours, of an employee who resigns from an organization listed in Schedule V of the *Financial Administration Act* in order to take a position with the Employer if the transferring employee is eligible and has chosen to have these credits transferred.

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34.18

- a. An employee shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay on the first (1st) day of the month following the employee's second (2nd) anniversary of service, as defined in clause 34.03.
- b. The vacation leave credits provided in paragraph 34.18(a) above shall be excluded from the application of paragraph 34.11, dealing with the Carry-Over and/or Liquidation of Vacation Leave.

Article 35 Sick Leave With Pay

Credits

35.01

- a. An employee shall earn sick leave credits at the rate of nine decimal three seven five (9.375) hours for each calendar month for which the employee receives pay for at least seventy-five (75) hours.
- b. A shift worker shall earn additional sick leave credits at the rate of one decimal two five (1.25) hours for each calendar month during which he or she works shifts and he or she receives pay for at least seventy-five (75) hours. Such credits shall not be carried over in the next fiscal year and are available only if the employee has already used one hundred and twelve decimal five (112.5) hours of sick leave credits during the current fiscal year.

Granting of Sick Leave

35.02 An employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury provided that:

- a. he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer;
and
- b. he or she has the necessary sick leave credits.

35.03 Unless otherwise informed by the Employer, a statement signed by the employee stating that, because of illness or injury, he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 35.02(a).

35.04 When an employee has insufficient or no credits to cover the granting of sick leave with pay under the provisions of clause 35.02, sick leave with pay may, at the discretion of the Employer, be granted to the employee for a period of up to one hundred and eighty-seven decimal five (187.5) hours, subject to the deduction of such advanced leave from any sick leave credits subsequently earned.

35.05 When an employee is granted sick leave with pay, and injury-on-duty leave is subsequently approved for the same period, it shall be considered, for the purpose of the record of sick leave credits, that the employee was not granted sick leave with pay.

35.06 Where, in respect of any period of compensatory leave, an employee is granted sick leave with pay on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period if requested by the employee and approved by the Employer, or reinstated for use at a later date.

35.07 Sick leave credits earned but unused by an employee during a previous period of employment in the public service shall be restored to an employee whose employment was terminated by reason of lay-off and who is reappointed in the public service within two (2) years from the date of lay-off.

35.08 The Employer agrees that an employee shall not be terminated for cause for reasons of incapacity pursuant to paragraph 12(1)(e) of the *Financial Administration Act* at a date earlier than the date at which the employee will have used his or her accumulated sick leave credits except where the incapacity is the result of an injury or illness for which injury-on-duty leave has been granted pursuant to Article 37.

Article 36

Medical Appointment for Pregnant Employees

36.01 Up to three decimal seven five (3.75) hours of reasonable time off with pay will be granted to pregnant employees for the purpose of attending routine medical appointments.

36.02 Where a series of continuing appointments is necessary for the treatment of a particular condition relating to the pregnancy, absences shall be charged to sick leave.

Article 37

Injury-on-Duty Leave

37.01 An employee shall be granted injury-on-duty leave with pay for such period as may be reasonably determined by the Employer when a claim has been made pursuant to the *Government Employees Compensation Act* and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

- a. personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct,
or
- b. an industrial illness or a disease arising out of and in the course of the employee's employment,

if the employee agrees to remit to the Receiver General for Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease, provided, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.

****Article 38**

Maternity Leave Without Pay

38.01 Maternity Leave Without Pay

- a. An employee who becomes pregnant shall, upon request, be granted maternity leave without pay for a period beginning before, on or after the termination date of pregnancy and ending not later than eighteen (18) weeks after the termination date of pregnancy.

- b. Notwithstanding paragraph (a):
 - i. where the employee has not yet proceeded on maternity leave without pay and her newborn child is hospitalized,
or
 - ii. where the employee has proceeded on maternity leave without pay and then returns to work for all or part of the period during which her newborn child is hospitalized,the period of maternity leave without pay defined in paragraph (a) may be extended beyond the date falling eighteen (18) weeks after the date of termination of pregnancy by a period equal to that portion of the period of the child's hospitalization during which the employee was not on maternity leave, to a maximum of eighteen (18) weeks.
- c. The extension described in paragraph (b) shall end not later than fifty-two (52) weeks after the termination date of pregnancy.
- d. The Employer may require an employee to submit a medical certificate certifying pregnancy.
- e. An employee who has not commenced maternity leave without pay may elect to:
 - i. use earned vacation and compensatory leave credits up to and beyond the date that her pregnancy terminates;
 - ii. use her sick leave credits up to and beyond the date that her pregnancy terminates, subject to the provisions set out in Article 35, Sick Leave With Pay. For purposes of this subparagraph, the terms "illness" or "injury" used in Article 35, Sick Leave With Pay, shall include medical disability related to pregnancy.
- f. An employee shall inform the Employer in writing of her plans for taking leave with and without pay to cover her absence from work due to the pregnancy at least four (4) weeks in advance of the initial date of continuous leave of absence during which termination of pregnancy is expected to occur unless there is a valid reason why the notice cannot be given.
- g. Leave granted under this clause shall be counted for the calculation of "continuous employment" for the purpose of calculating severance pay and "service" for the purpose of calculating vacation leave. Time spent on such leave shall be counted for pay increment purposes.

38.02 Maternity Allowance

- a. An employee who has been granted maternity leave without pay shall be paid a maternity allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in paragraphs (c) to (i), provided that she:
 - i. has completed six (6) months of continuous employment before the commencement of her maternity leave without pay,
 - ii. provides the Employer with proof that she has applied for and is in receipt of maternity benefits under the Employment Insurance or the Québec Parental Insurance Plan in respect of insurable employment with the Employer,
and
 - iii. has signed an agreement with the Employer stating that:
 - A. she will return to work on the expiry date of her maternity leave without pay unless the return to work date is modified by the approval of another form of leave;
 - B. following her return to work, as described in section (A), she will work for a period equal to the period she was in receipt of maternity allowance;
 - C. should she fail to return to work for the Employer, Parks Canada, the Canada Revenue Agency or the Canadian Food Inspection Agency in accordance with section (A), or should she return to work but fail to work for the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the *Public Service Superannuation Act*, she will be indebted to the Employer for an amount determined as follows:

$$\frac{\text{(allowance received)} \quad X \quad \text{(remaining period to be worked following her return to work)}}{\text{[total period to be worked as specified in (B)]}}$$

however, an employee whose specified period of employment expired and who is rehired in any portion of the Core Public Administration as specified in the *Public Service Labour Relations Act* or Parks Canada, the Canada Revenue Agency or the Canadian Food Inspection Agency within a period of ninety (90) days or less is not indebted for the amount if her new period of employment is sufficient to meet the obligations specified in section (B).

- b. For the purpose of sections (a)(iii)(B), and (C), periods of leave with pay shall count as time worked. Periods of leave without pay during the employee's return to work will not be counted as time worked but shall interrupt the period referred to in section (a)(iii)(B), without activating the recovery provisions described in section (a)(iii)(C).
- c. Maternity allowance payments made in accordance with the SUB Plan will consist of the following:
 - i. where an employee is subject to a waiting period of two (2) weeks before receiving Employment Insurance maternity benefits, ninety-three per cent (93%) of her weekly rate of pay for each week of the waiting period, less any other monies earned during this period, and
 - ii. for each week that the employee receives a maternity benefit under the *Employment Insurance or the Québec Parental Insurance plan*, she is eligible to receive the difference between ninety-three per cent (93%) of her weekly rate and the maternity benefit, less any other monies earned during this period which may result in a decrease in her maternity benefit to which she would have been eligible if no extra monies had been earned during this period.
- d. At the employee's request, the payment referred to in subparagraph 38.02(c)(i) will be estimated and advanced to the employee. Adjustments will be made once the employee provides proof of receipt of Employment Insurance or Québec Parental Insurance Plan maternity benefits.
- e. The maternity allowance to which an employee is entitled is limited to that provided in paragraph (c) and an employee will not be reimbursed for any amount that she may be required to repay pursuant to the *Employment Insurance Act or the Parental Insurance Act in Québec*.
- f. The weekly rate of pay referred to in paragraph (c) shall be:
 - i. for a full-time employee, the employee's weekly rate of pay on the day immediately preceding the commencement of maternity leave without pay,
 - ii. for an employee who has been employed on a part-time or on a combined full-time and part-time basis during the six (6) month period preceding the commencement of maternity leave, the rate obtained by multiplying the weekly rate of pay in subparagraph (i) by the fraction obtained by dividing the employee's straight time earnings by the straight time earnings the employee would have earned working full-time during such period.
- g. The weekly rate of pay referred to in paragraph (f) shall be the rate to which the employee is entitled for her substantive level to which she is appointed.
- h. Notwithstanding paragraph (g), and subject to subparagraph (f)(ii), if on the day immediately preceding the commencement of maternity leave without pay an employee has been on an acting assignment for at least four (4) months, the weekly rate shall be the rate she was being paid on that day.
- i. Where an employee becomes eligible for a pay increment or pay revision that would increase the maternity allowance while in receipt of the maternity allowance, the allowance shall be adjusted accordingly.
- j. Maternity allowance payments made under the SUB Plan will neither reduce nor increase an employee's deferred remuneration or severance pay.

38.03 Special Maternity Allowance for Totally Disabled Employees

- a. An employee who:
 - i. fails to satisfy the eligibility requirement specified in subparagraph 38.02(a)(ii) solely because a concurrent entitlement to benefits under the Disability Insurance (DI) Plan, the Longterm Disability (LTD) Insurance portion of the Public Service Management Insurance Plan (PSMIP) or the *Government Employees Compensation Act* prevents her from receiving Employment Insurance or Québec Parental Insurance Plan maternity benefits, and
 - ii. has satisfied all of the other eligibility criteria specified in paragraph 38.02(a), other than those specified in sections (A) and (B) of subparagraph 38.02(a)(iii),

shall be paid, in respect of each week of maternity allowance not received for the reason described in subparagraph (i), the difference between ninety-three per cent (93%) of her weekly rate of pay and the gross amount of her weekly disability benefit under the DI Plan, the LTD Plan or via the *Government Employees Compensation Act*.

- b. An employee shall be paid an allowance under this clause and under clause 38.02 for a combined period of no more than the number of weeks during which she would have been eligible for maternity benefits under the *Employment Insurance or the Québec Parental Insurance Plan* had she not been disqualified from Employment Insurance or Québec Parental Insurance Plan maternity benefits for the reasons described in subparagraph (a)(i).

Article 39

Maternity-Related Reassignment or Leave

39.01 An employee who is pregnant or nursing may, during the period from the beginning of pregnancy to the end of the twenty-fourth (24th) week following the birth, request that the Employer modify her job functions or reassign her to another job if, by reason of the pregnancy or nursing, continuing any of her current functions may pose a risk to her health or the health of the foetus or child. On being informed of the cessation, the Employer, with the written consent of the employee, shall notify the appropriate workplace committee or the health and safety representative.

39.02 An employee's request under clause 39.01 must be accompanied or followed as soon as possible by a medical certificate indicating the expected duration of the potential risk and the activities or conditions to be avoided in order to eliminate the risk. Depending on the particular circumstances of the request, the Employer may obtain an independent medical opinion.

39.03 An employee who has made a request under clause 39.01 is entitled to continue in her current job while the Employer examines her request but, if the risk posed by continuing any of her job functions so requires, she is entitled to be immediately assigned alternative duties until such time as the Employer:

- a. modifies her job functions or reassigns her;
- or
- b. informs her in writing that it is not reasonably practicable to modify her job functions or reassign her.

39.04 Where reasonably practicable, the Employer shall modify the employee's job functions or reassign her.

39.05 Where the Employer concludes that a modification of job functions or a reassignment that would avoid the activities or conditions indicated in the medical certificate is not reasonably practicable, the Employer shall so inform the employee in writing and shall grant leave of absence without pay to the employee for the duration of the risk as indicated in the medical certificate. However, such leave shall end no later than twenty-four (24) weeks after the birth.

39.06 An employee whose job functions have been modified, who has been reassigned or who is on leave of absence shall give at least two (2) weeks' notice in writing to the Employer of any change in duration of the risk or the inability as indicated in the medical certificate unless there is a valid reason why that notice cannot be given. Such notice must be accompanied by a new medical certificate.

****Article 40**

Parental Leave Without Pay

40.01 Parental Leave Without Pay

- a. Where an employee has or will have the actual care and custody of a new-born child (including the new-born child of a common-law partner), the employee shall, upon request, be granted parental leave without pay for a single period of up to thirty-seven (37) consecutive weeks in the fifty-two (52) week period beginning on the day on which the child is born or the day on which the child comes into the employee's care.
- b. Where an employee commences legal proceedings under the laws of a province to adopt a child or obtains an order under the laws of a province for the adoption of a child, the employee shall, upon request, be granted parental leave without pay for a single period of up to thirty-seven (37) consecutive weeks in the fifty-two week (52) period beginning on the day on which the child comes into the employee's care.
- c. Notwithstanding paragraphs (a) and (b) above, at the request of an employee and at the discretion of the Employer, the leave referred to in the paragraphs (a) and (b) above may be taken in two periods.
- d. Notwithstanding paragraphs (a) and (b):
 - a. where the employee's child is hospitalized within the period defined in the above paragraphs, and the employee has not yet proceeded on parental leave without pay, or
 - b. where the employee has proceeded on parental leave without pay and then returns to work for all or part of the period during which his or her child is hospitalized,

the period of parental leave without pay specified in the original leave request may be extended by a period equal to that portion of the period of the child's hospitalization during which the employee was not on parental leave. However, the extension shall end not later than one hundred and four (104) weeks after the day on which the child comes into the employee's care.
- e. An employee who intends to request parental leave without pay shall notify the Employer at least four (4) weeks in advance of the commencement date of such leave.
- f. The Employer may:
 - i. defer the commencement of parental leave without pay at the request of the employee;
 - ii. grant the employee parental leave without pay with less than four (4) weeks' notice;
 - iii. require an employee to submit a birth certificate or proof of adoption of the child.
- g. Leave granted under this clause shall count for the calculation of "continuous employment" for the purpose of calculating severance pay and "service" for the purpose of calculating vacation leave. Time spent on such leave shall count for pay increment purposes.

40.02 Parental Allowance

- a. An employee who has been granted parental leave without pay, shall be paid a parental allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in paragraphs (c) to (i), providing he or she:
 - i. has completed six (6) months of continuous employment before the commencement of parental leave without pay,
 - ii. provides the Employer with proof that he or she has applied for and is in receipt of parental, paternity or adoption benefits under the *Employment Insurance or the Québec Parental Insurance Plan* in respect of insurable employment with the

Employer,
and

iii. has signed an agreement with the Employer stating that:

- A. the employee will return to work on the expiry date of his/her parental leave without pay, unless the return to work date is modified by the approval of another form of leave;
- B. Following his or her return to work, as described in section (A), the employee will work for a period equal to the period the employee was in receipt of the parental allowance, in addition to the period of time referred to in section 38.02 (a)(iii)(B), if applicable;
- C. should he or she fail to return to work for the Employer, Parks Canada, the Canada Revenue Agency or the Canadian Food Inspection Agency in accordance with section (A) or should he or she return to work but fail to work the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the *Public Service Superannuation Act*, he or she will be indebted to the Employer for an amount determined as follows:

$$\frac{\text{(allowance received)} \quad \times \quad \text{(remaining period to be worked following his or her return to work)}}{\text{[total period to be worked as specified in (B)]}}$$

however, an employee whose specified period of employment expired and who is rehired in any portion of the Core Public Administration as specified in the *Public Service Labour Relations Act* or Parks Canada, the Canada Revenue Agency or the Canadian Food Inspection Agency within a period of ninety (90) days or less is not indebted for the amount if his or her new period of employment is sufficient to meet the obligations specified in section (B).

- b. For the purpose of sections (a)(iii)(B), and (C), periods of leave with pay shall count as time worked. Periods of leave without pay during the employee's return to work will not be counted as time worked but shall interrupt the period referred to in section (a)(iii)(B), without activating the recovery provisions described in section (a)(iii)(C).
- c. Parental Allowance payments made in accordance with the SUB Plan will consist of the following:
 - i. where an employee is subject to a waiting period of two (2) weeks before receiving Employment Insurance parental benefits, ninety-three per cent (93%) of his/her weekly rate of pay for each week of the waiting period, less any other monies earned during this period;
 - ii. for each week the employee receives parental, adoption or paternity benefit under the *Employment Insurance or the Québec Parental Insurance Plan*, he/she is eligible to receive the difference between ninety-three per cent (93%) of his or her weekly rate and the parental, adoption or paternity benefit, less any other monies earned during this period which may result in a decrease in his/her parental, adoption or paternity benefit to which he/she would have been eligible if no extra monies had been earned during this period.
 - iii. where an employee has received the full eighteen (18) weeks of maternity benefit and the full thirty-two (32) weeks of parental benefit under the Québec Parental Insurance Plan and thereafter remains on parental leave without pay, she is eligible to receive a further parental allowance for a period of two (2) weeks, ninety-three per cent (93%) of her weekly rate of pay for each week, less any other monies earned during this period.
- d. At the employee's request, the payment referred to in subparagraph 40.02(c)(i) will be estimated and advanced to the employee. Adjustments will be made once the employee

- provides proof of receipt of Employment Insurance or Québec Parental Insurance Plan parental benefits.
- e. The parental allowance to which an employee is entitled is limited to that provided in paragraph (c) and an employee will not be reimbursed for any amount that he or she is required to repay pursuant to the *Employment Insurance Act or the Parental Insurance Act in Quebec*.
 - f. The weekly rate of pay referred to in paragraph (c) shall be:
 - i. for a full-time employee, the employee's weekly rate of pay on the day immediately preceding the commencement of maternity or parental leave without pay;
 - ii. for an employee who has been employed on a part-time or on a combined full-time and part-time basis during the six (6) month period preceding the commencement of maternity or parental leave without pay, the rate obtained by multiplying the weekly rate of pay in subparagraph (i) by the fraction obtained by dividing the employee's straight time earnings by the straight time earnings the employee would have earned working full-time during such period.
 - g. The weekly rate of pay referred to in paragraph (f) shall be the rate to which the employee is entitled for the substantive level to which she or he is appointed.
 - h. Notwithstanding paragraph (g), and subject to subparagraph (f)(ii), if on the day immediately preceding the commencement of parental leave without pay an employee is performing an acting assignment for at least four (4) months, the weekly rate shall be the rate the employee was being paid on that day.
 - i. Where an employee becomes eligible for a pay increment or pay revision that would increase the parental allowance while in receipt of parental allowance, the allowance shall be adjusted accordingly.
 - j. Parental allowance payments made under the SUB Plan will neither reduce nor increase an employee's deferred remuneration or severance pay.
 - k. The maximum combined, shared maternity and parental allowances payable under this collective agreement shall not exceed fifty-two (52) weeks for each combined maternity and parental leave without pay.

40.03 Special Parental Allowance for Totally Disabled Employees

- a. An employee who:
 - i. fails to satisfy the eligibility requirement specified in subparagraph 40.02(a)(ii) solely because a concurrent entitlement to benefits under the Disability Insurance (DI) Plan, the Long-term Disability (LTD) Insurance portion of the Public Service Management Insurance Plan (PSMIP) or via the *Government Employees Compensation Act* prevents the employee from receiving Employment Insurance or Québec Parental Insurance Plan benefits, and
 - ii. has satisfied all of the other eligibility criteria specified in paragraph 40.02(a), other than those specified in sections (A) and (B) of subparagraph 40.02(a)(iii), shall be paid, in respect of each week of benefits under the parental allowance not received for the reason described in subparagraph (i), the difference between ninety-three per cent (93%) of the employee's rate of pay and the gross amount of his or her weekly disability benefit under the DI Plan, the LTD Plan or via the *Government Employees Compensation Act*.
- b. An employee shall be paid an allowance under this clause and under clause 40.02 for a combined period of no more than the number of weeks during which the employee would have been eligible for parental, paternity or adoption benefits under the Employment Insurance or the Québec Parental Insurance Plan, had the employee not been disqualified from Employment Insurance or Québec Parental Insurance Plan benefits for the reasons described in subparagraph (a)(i).

****Article 41**

Leave Without Pay for the Care of Family

41.01 Both parties recognize the importance of access to leave for the purpose of the care of family.

41.02 An employee shall be granted leave without pay for the care of family in accordance with the following conditions:

- a. an employee shall notify the Employer in writing as far in advance as possible but not less than four (4) weeks in advance of the commencement date of such leave unless, because of urgent or unforeseeable circumstances, such notice cannot be given;
- b. leave granted under this Article shall be for a minimum period of three (3) weeks;
- c. the total leave granted under this Article shall not exceed five (5) years during an employee's total period of employment in the public service;
- d. leave granted for a period of one (1) year or less shall be scheduled in a manner which ensures continued service delivery.
- e. **Compassionate Care Leave**
 - i. Notwithstanding the definition of "family" found in clause 2.01 and notwithstanding paragraphs 41.02(b) and (d) above, an employee who provides the Employer with proof that he or she is in receipt of or awaiting Employment Insurance (EI) Compassionate Care Benefits may be granted leave for periods of less than three (3) weeks while in receipt of or awaiting these benefits.
 - ii. Leave granted under this clause may exceed the five (5) year maximum provided in paragraph (c) above only for the periods where the employee provides the Employer with proof that he or she is in receipt of or awaiting Employment Insurance (EI) Compassionate Care Benefits.
 - iii. When notified, an employee who was awaiting benefits must provide the Employer with proof that the request for Employment Insurance (EI) Compassionate Care Benefits has been accepted.
 - iv. When an employee is notified that their request for Employment Insurance (EI) Compassionate Care Benefits has been denied, paragraphs (i) and (ii) above cease to apply.

41.03 An employee who has proceeded on leave without pay may change his or her return-to-work date if such change does not result in additional costs to the Employer.

41.04 All leave granted under Leave Without Pay for the Long-Term Care of a Parent or Leave Without Pay for the Care and Nurturing of Pre-School Age Children provisions of previous Program and Administrative Services collective agreements or other agreements will not count towards the calculation of the maximum amount of time allowed for care of family during an employee's total period of employment in the public service.

Article 42

Volunteer Leave

42.01 Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, a single period of up to seven decimal five (7.5) hours of leave with pay to work as a volunteer for a charitable or community organization or activity, other than for activities related to the Government of Canada Workplace Charitable Campaign.

The leave will be scheduled at times convenient both to the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leave at such times as the employee may request.

Article 43

Leave With Pay for Family-Related Responsibilities

43.01 For the purpose of this Article, family is defined as spouse (or common-law partner resident with the employee), children (including foster children or children of the spouse or common-law partner), parents (including stepparents or foster parents), or any relative permanently residing in the employee's household or with whom the employee permanently resides.

43.02 The total leave with pay which may be granted under this Article shall not exceed thirty-seven decimal five (37.5) hours in a fiscal year.

43.03 Subject to clause 43.02, the Employer shall grant the employee leave with pay under the following circumstances:

- a. to take a family member for medical or dental appointments, or for appointments with school authorities or adoption agencies, if the supervisor was notified of the appointment as far in advance as possible;
- b. to provide for the immediate and temporary care of a sick member of the employee's family and to provide the employee with time to make alternative care arrangements where the illness is of a longer duration;
- c. to provide for the immediate and temporary care of an elderly member of the employee's family;
- d. for needs directly related to the birth or the adoption of the employee's child.

43.04 Where, in respect of any period of compensatory leave, an employee is granted leave with pay for illness in the family under paragraph 43.03(b) above, on production of a medical certificate, the period of compensatory leave so displaced shall either be added to the compensatory leave period, if requested by the employee and approved by the Employer, or reinstated for use at a later date.

Article 44

Leave Without Pay for Personal Needs

44.01 Leave without pay will be granted for personal needs in the following manner:

- a. subject to operational requirements, leave without pay for a period of up to three (3) months will be granted to an employee for personal needs;
- b. subject to operational requirements, leave without pay for more than three (3) months but not exceeding one (1) year will be granted to an employee for personal needs;
- c. an employee is entitled to leave without pay for personal needs only once under each of paragraphs (a) and (b) during the employee's total period of employment in the public service. Leave without pay granted under this clause may not be used in combination with maternity or parental leave without the consent of the Employer.

Article 45

Leave Without Pay for Relocation of Spouse

45.01 At the request of an employee, leave without pay for a period of up to one (1) year shall be granted to an employee whose spouse or common-law partner is permanently relocated and up to five (5) years to an employee whose spouse or common-law partner is temporarily relocated.

Article 46

Bereavement Leave With Pay

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46.01 When a member of the employee's family dies, an employee shall be entitled to a bereavement period of five (5) consecutive calendar days. Such bereavement period, as determined by the employee, must include the day of the memorial commemorating the deceased, or must begin within two (2) days following the death. During such period, the employee shall be paid for those days which are not regularly scheduled days of rest for the employee. In addition, the employee may be granted up to three (3) days' leave with pay for the purpose of travel related to the death.

46.02 An employee is entitled to one (1) day's bereavement leave with pay for a purpose related to the death of his or her son-in-law, daughter-in-law, brother-in-law or sister-in-law.

46.03 If, during a period of sick leave, vacation leave or compensatory leave, an employee is bereaved in circumstances under which he or she would have been eligible for bereavement leave with pay under clauses 46.01 and 46.02, the employee shall be granted bereavement leave with pay and his or her paid leave credits shall be restored to the extent of any concurrent bereavement leave with pay granted.

46.04 It is recognized by the parties that circumstances which call for leave in respect of bereavement are based on individual circumstances. On request, the deputy head of a department may, after considering the particular circumstances involved, grant leave with pay for a period greater than and/or in a manner different than that provided for in clauses 46.01 and 46.02.

Article 47

Court Leave

47.01 The Employer shall grant leave with pay to an employee for the period of time he or she is compelled:

- a. to be available for jury selection;
- b. to serve on a jury;
- c. by subpoena, summons or other legal instrument, to attend as a witness in any proceeding held:
 - i. in or under the authority of a court of justice or before a grand jury;
 - ii. before a court, judge, justice, magistrate or coroner;
 - iii. before the Senate or House of Commons of Canada or a committee of the Senate or House of Commons otherwise than in the performance of the duties of the employee's position;
 - iv. before a legislative council, legislative assembly or house of assembly or any committee thereof that is authorized by law to compel the attendance of witnesses before it;
 - or
 - v. before an arbitrator or umpire or a person or body of persons authorized by law to make an inquiry and to compel the attendance of witnesses before it.

Article 48

Personnel Selection Leave

48.01 Where an employee participates in a personnel selection process, including the appeal process where applicable, for a position in the public service as defined in the *Public Service Labour Relations Act*, the employee is entitled to leave with pay for the period during which the employee's presence is required for purposes of the selection process and for such further period as the Employer considers reasonable for the employee to travel to and from the place where his or her presence is so required.

Article 49

Education Leave Without Pay

49.01 The Employer recognizes the usefulness of education leave. Upon written application by the employee and with the approval of the Employer, an employee may be granted education leave without pay for varying periods of up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for studies in some field of education in which preparation is needed to fill the employee's present role more adequately or to undertake studies in some field in order to provide a service which the Employer requires or is planning to provide.

49.02 At the Employer's discretion, an employee on education leave without pay under this Article may receive an allowance in lieu of salary of up to one hundred per cent (100%) of the employee's annual rate of pay, depending on the degree to which the education leave is deemed by the Employer to be relevant to organizational requirements. Where the employee receives a grant, bursary or scholarship, the education leave allowance may be reduced. In such cases, the amount of the reduction shall not exceed the amount of the grant, bursary or scholarship.

49.03 Allowances already being received by the employee may, at the discretion of the Employer, be continued during the period of the education leave. The employee shall be notified when the leave is approved as to whether such allowances are to be continued in whole or in part.

49.04

- a. As a condition of the granting of education leave without pay, an employee shall, if required, give a written undertaking prior to the commencement of the leave to return to the service of the Employer for a period of not less than the period of the leave granted.
- b. If the employee:
 - i. fails to complete the course,
 - ii. does not resume employment with the Employer on completion of the course, or
 - iii. ceases to be employed except by reason of death or lay-off before termination of the period he or she has undertaken to serve after completion of the course,

the employee shall repay the Employer all allowances paid to him or her under this Article during the education leave or such lesser sum as shall be determined by the Employer.

Article 50

Career Development Leave

50.01 Career development refers to an activity which in the opinion of the Employer, is likely to be of assistance to the individual in furthering his or her career development and to the organization in achieving its goals. The following activities shall be deemed to be part of career development:

- a. a course given by the Employer;
- b. a course offered by a recognized academic institution;
- c. a seminar, convention or study session in a specialized field directly related to the employee's work.

50.02 Upon written application by the employee and with the approval of the Employer, career development leave with pay may be given for any one of the activities described in clause 50.01. The employee shall receive no compensation under Article 28, Overtime, or Article 32, Travelling Time, during time spent on career development leave provided for in this Article.

50.03 Employees on career development leave shall be reimbursed for all reasonable travel and other expenses incurred by them which the Employer may deem appropriate.

Article 51

Examination Leave With Pay

51.01 At the Employer's discretion, examination leave with pay may be granted to an employee for the purpose of writing an examination which takes place during the employee's scheduled hours of work.

Article 52

Leave With or Without Pay for Other Reasons

52.01 At its discretion, the Employer may grant:

- a. leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld;
- b. leave with or without pay for purposes other than those specified in this Agreement.

52.02 Personal Leave

Subject to operational requirements as determined by the Employer and with an advance notice of at least five (5) working days, the employee shall be granted, in each fiscal year, a single period of up to seven decimal five (7.5) hours of leave with pay for reasons of a personal nature.

The leave will be scheduled at times convenient to both the employee and the Employer. Nevertheless, the Employer shall make every reasonable effort to grant the leaves at such times as the employee may request.



Policy on the Prevention and Resolution of Harassment in the Workplace

Preamble

As the employer of the federal Public Service, the Treasury Board is committed to providing a work environment where all persons working for the Public Service are treated with respect and dignity. Bargaining agents are also supportive of this and involved in initiatives to promote such an environment.

Harassment affects workplace and individual well-being and will not be tolerated. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation. The application of this policy will help create a work environment where all are treated with respect and dignity. It will not only promote the well-being of all in the workplace, but it will reinforce those values of integrity and trust that are the foundation of a sound organization.

Dealing with harassment can be a complex matter. What one person may consider to be proper behaviour, another may believe to be harassment. Note that the proper exercise of one's authority or responsibility does not generally constitute harassment. The Appendix provides some examples for better understanding.

The *Canadian Human Rights Act* provides every person in the workplace the right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds.

The Treasury Board policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the *Canadian Human Rights Act*, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

The policy promotes the prevention of harassment and focuses on the prompt resolution of harassment. Whether the source of harassment comes from within the Public Service or from outside, any allegation of harassment is serious and should be taken seriously. Harassment needs to be addressed with sensitivity, promptness and discretion. Open communication and early intervention are essential in preventing and resolving harassment.

Effective date

The effective date of this policy is June 1, 2001.

Policy objective

The purpose of this policy is to foster a respectful workplace through the prevention and prompt resolution of harassment.

Policy statement

Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the Public Service, whether or not they are employees, should enjoy a harassment-free workplace.

Application

This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the *Public Service Staff Relations Act*.

The complaint process as defined in this policy applies to federal public service employees. Though other persons who work for the Public Service cannot access the complaint process described in the policy, managers are nevertheless expected to abide by the spirit of the policy and ensure that their harassment concerns are addressed.

The policy does not apply to complaints from the public. The responsibility for follow-up on such complaints lies with departments/organizations.

Definitions

Harassment (*harcèlement*)

is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Complaint (*plainte*)

is a formal allegation of harassment submitted in writing to the delegated manager, and which is based on actions defined as *harassment*.

Delegated manager (*gestionnaire délégué*)

is a senior executive designated by the deputy head, accountable for the harassment complaint process.

Mediation (*médiation*)

is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

Policy requirements

- Deputy heads are responsible for fostering a work environment free of harassment.
- All employees must be informed of this policy.
- Learning opportunities related to the *Policy on the Prevention and Resolution of Harassment in the Workplace* must be made available to employees and managers/supervisors.
- Employees must be informed of the name or title and address of the delegated manager (s) in his or her department/organization.
- Early resolution should be used to resolve problems at the outset.
- Mediation must be offered before an investigation is initiated.
- The complaint process, including the investigation if necessary, should be completed without undue delay, normally in six months or less.

- Corrective action must be timely in all situations of harassment, whether it involves employees or other persons working for the Public Service.
- Harassment may result in corrective or disciplinary measures being taken, up to and including termination of employment. Disciplinary or corrective measures may also be taken against the following: any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.
- If a complaint of harassment is determined at the departmental level to be unfounded, and is pursued in the courts or at a tribunal, the respondent's department/organization will provide legal assistance to the respondent.
- Departments/organizations must meet the requirements of this policy.

Responsibility and authority

The ultimate responsibility and authority for applying this policy rests with the deputy head and his or her authorized representative(s).

Expectations

Employees

- a. Employees are expected to act towards other individuals professionally and respectfully.
- b. Employees who believe they have been treated in an improper and offensive manner are expected to communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease. They can get help or guidance from the supervisor, the person designated by the department/organization, or the union.
- c. They can expect to be informed of the Treasury Board policy.
- d. They can expect prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager.
- e. They can expect to be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint.
- f. They will be encouraged to participate in a problem resolution process before proceeding with the complaint process.

Complainants, respondents and witnesses

- a. Complainants, respondents and witnesses are expected to provide information as required in the steps noted below under "Complaint process".
- b. They are expected to co-operate in the complaint process if and when called upon to do so.
- c. They are expected to limit the discussion of the complaint to those who need to know.
- d. They can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.
- e. Complainants and respondents will receive information related to the complaint in writing, including allegations, as noted in the steps below, under "Complaint process", and in accordance with the principles of procedural fairness.

- f. Complainants and respondents may have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process.
- g. Complainants and respondents can expect to review a copy of the draft report. They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.
- h. If the complaint is founded, complainants will be informed verbally whether corrective or disciplinary measures will be taken as a result of their complaint.
- i. If the complaint is frivolous or in bad faith, respondents will be informed verbally whether corrective or disciplinary measures will be taken.
- j. Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined at the departmental level to be unfounded, is pursued in the courts or at a tribunal.

Managers

- a. Managers are expected to lead by example and to act respectfully in dealings with employees and other persons working for the Public Service.
- b. They can expect to have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution.
- c. They are expected to ensure that employees are aware of the policy and to remind them of its contents as deemed necessary.
- d. They are expected to ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.
- e. They are expected to intervene promptly when they become aware of improper or offensive conduct and to involve the parties in resolving the problem.
- f. They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.
- g. They are expected to handle all harassment situations confidentially and to ensure that others act accordingly.
- h. They are expected to address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships.

Delegated managers

- a. Delegated managers are expected to be impartial in any complaint process in which they are involved.
- b. They can expect to have access to learning opportunities related to their role and responsibilities as delegated managers.
- c. They are expected to apply the established steps in the complaint process.
- d. They are expected to take the necessary action to ensure the confidentiality of complaints.
- e. They are expected to ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.
- f. They are expected to offer mediation and to ensure that the mediator or co-mediators meet the requirements of the Shared Mediators Program for Cases of Harassment or Conflict in the Workplace;

- g. They are expected to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;
- h. They are expected to assign a mandate to the investigator(s) and ensure that persons conducting investigations are qualified in accordance with the Competencies Profile for Internal and External Harassment Investigators, that they are impartial, that they have no supervisory relationship with the parties, and that they are not in a position of conflict of interest.
- i. They are expected to ensure that corrective and/or disciplinary measures are taken, where warranted.
- j. They are expected to ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.
- k. They are expected to ensure that parties are provided with the information to which they are entitled.

Investigators

- a. Investigators are expected to meet the requirements as outlined in the Competencies Profile for Internal and External Harassment Investigators.
- b. They are expected to apply the principles of procedural fairness.
- c. They are expected to abide by their assigned mandate.

Early problem resolution

The objective of early resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner. The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary. An allegation of harassment is serious. If a person working for the Public Service believes that he or she has been harassed, the following actions should be taken.

The person who feels offended by the actions of another person working for the Public Service is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

Complaint process

The complaint process applies to federal public service employees. Other persons working for the Public Service who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with the delegated manager. All steps should be completed without undue delay, normally in six months or less. Departments must establish time frames appropriate to their particular organizations, in consultation with their union officials.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

If the allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services as noted above under "Delegated managers", section (f).

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must meet the requirements as noted previously under "Delegated managers", section (h). The investigator must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to proceed to Step 6.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

Resource body

Under an agreement with the Treasury Board of Canada Secretariat, the Public Service Commission will act as an expert resource body by developing programs and providing services to departments in the prevention and resolution of harassment in the workplace, in such areas as training, mediation and investigation.

Other recourse

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, employees have the right to file a complaint with the Canadian Human Rights Commission.

Assaults including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

If a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this policy will not proceed further and the file will be closed.

Monitoring

Treasury Board of Canada Secretariat and departments/organizations will work together to monitor results in achieving the policy objective and statement.

References

Access to Information Act
Canadian Human Rights Act
Criminal Code
Official Languages Act
Privacy Act
Public Service Employment Act
Public Service Staff Relations Act

Enquiries

Enquiries relating to this policy should be referred to the responsible officer designated in departmental/organizational headquarters, who in turn may direct questions regarding interpretation to the Human Resources Branch of the Treasury Board of Canada Secretariat.

Appendix - Guide for determining what constitutes harassment

Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Is the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*. The prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

The following are some examples, but not an exhaustive list, to clarify what is meant by "harassment".

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> ■ <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. ■ Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> ■ Criticizing an employee in public. 	<ul style="list-style-type: none"> ■ Allocating work. ■ Following-up on work absences. ■ Requiring performance to job standards. ■ Taking disciplinary measures. ■ <i>A single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> ■ <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> ■ Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> ■ Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> ■ Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> ■ Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> ■ Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.
<ul style="list-style-type: none"> ■ Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. ■ Unwelcome sexual advances. 	<ul style="list-style-type: none"> ■ Making sexually suggestive remarks. ■ Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> ■ A social relationship welcomed by both individuals. ■ Friendly gestures among co-workers such as a pat on the back.

Sexual and physical assault are covered by the *Criminal Code*.

border officer files sex harassment lawsuit against CBSA, colleague

BY NEAL HALL, VANCOUVER SUN SEPTEMBER 8, 2011

An officer with the Canada Border Services Agency is suing her employer and a work colleague for sexual harassment and mental abuse.

Michelle Andrea Pele of Surrey claims in her legal action that her colleague Marco Castagna insulted her, made sexually explicit comments about her and other women, directed profanities at her and forwarded offensive and degrading emails, causing her emotional distress.

The lawsuit claims when Pele made her concerns about Castagna known to her employer, he sexually assaulted Pele at work on Aug. 29, 2009.

Pele has since been on medical leave and is receiving counselling, her lawsuit says.

Pele, who claims the CBSA is vicariously liable for the actions of Castagna, was hired in 2004 as a border officer.

She claims the CBSA was negligent in failing to use reasonable care in conducting an investigation of her complaints and to ensure the workplace was free from sexual harassment.

She claims she suffered mental and emotional abuse.

None of the allegations have been proven in court.

The defendants are expected to file statements of defence at a later date.

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Help

Claims FAQs

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Claims basics

What is a work-related injury or disease?

A work-related injury or disease is one that arises out of and in the course of employment or is due to the nature of employment.

To be covered by WorkSafeBC a worker must have been working when hurt, and the injury must have been caused by something to do with the job in order to be covered by WorkSafeBC.

For a disease, this means that the disease contracted must be caused by the work or the work environment in order to be covered by WorkSafeBC.

How is a claim processed?

After WorkSafeBC receives reports from

- * the injured worker
- * the employer and
- * the attending doctor

a WorkSafeBC staff member **processes the claim** to determine if the injury or disease was work-related.

What types of claims are there?

There are three types of claims:

No time lost – health care claim only

- * The worker has returned to work without losing time from work beyond the day of injury.
- * WorkSafeBC covers medical costs; the employer pays the worker for the day the accident occurred.

Time-loss claim

- * The claim is initially handled in the WorkSafeBC call centre by client service representatives (up to three weeks).
- * Claims more than three weeks are transferred to the entitlement unit, where entitlement officers adjudicate and facilitate return to work.

Time-loss – case management

- * Claims involving workers with non-traumatic activity-related soft tissue injury, catastrophic injury, severe brain injury, or a psychological injury are transferred directly to a case manager.
- * For claims more than four to six weeks, or where it is expected there may be problems returning to work, the claim is transferred to a case manager for ongoing management.

What is a claim number?

When a claim is made with WorkSafeBC, a claim number is assigned. With this number, the worker, the employer, and the health care provider can **check the status** of a claim online to find out if the claim has been accepted.

What happens if the injury occurs out of province?

If you are working outside of British Columbia and you normally live and work in B.C. and your employer is based in B.C., you will usually be covered by WorkSafeBC.

If you're not covered by WorkSafeBC, contact the workers' compensation board of the province in which you were injured. In some cases, you may be eligible for workers' compensation in B.C. and another province. In that case you have three months from the date of your injury to decide from which board you intend to claim compensation.

What happens if I'm moving to another province while still getting payment from WorkSafeBC?

Let the WorkSafeBC staff member handling your case know, and provide your address and phone number. Your benefits will not change unless the move delays your recovery and return to work. Note that WorkSafeBC will only pay health care costs up to the amount allowed in B.C.

Claims information for workers

What should I do if I'm injured at work?

- **Report it to your employer immediately.**
- Seek medical attention for your injury. If you need an ambulance or transportation from your workplace to your doctor's office or the hospital, your employer is required to pay those costs. Be sure to tell your doctor your injury is work related.
- Report your injury to WorkSafeBC as soon as possible. If you miss work as a result of your injury, please call our **Teleclaim Contact Centre**. If a WorkSafeBC staff member asks you to complete a **Worker's incident and injury report** or an **Application for Compensation and Report of Injury or Occupational Disease** (Form 6) at any time, it is important that you do so and submit it as soon as possible.
- It is against the law for an employer to tell you to not report an injury or disease, or even try to talk you out of reporting it to WorkSafeBC.

How do I start a claim?

Report your injury to your employer, your doctor, and WorkSafeBC. You will then receive a claim number and a personal access number from WorkSafeBC so you can view information about your claim.

How do I view information on my claim?

You can **view information about your claim**, including WorkSafeBC correspondence, decisions on your claim, payment information, return-to-work dates, and more. You'll need the claim number and your personal access number.

When can I return to work?

You can return to work as soon as you, your doctor, and WorkSafeBC feel you are able.

You may be able to **start working part time**, or at reduced activity levels, or even at another task if you are not able to return to full duties immediately.

Who is on my claim's WorkSafeBC team?

Client service representatives answer questions and make entitlement decisions on claims, and manage straightforward claims with up to three weeks of time loss.

Entitlement officers make decisions on straightforward and complex cases, and manage straightforward claims involving up to four weeks of time loss.

Service expeditors support the entitlement officer and arrange work conditioning referrals.

Case managers provide ongoing management of complex claims that are in receipt of wage loss for periods of greater than four weeks.

Team assistants provide support to the case manager.

What if I move during the course of my claim?

If your name or address changes over the course of a claim, please complete and submit a **Change of address, name, or contact information (#25w112)** form to WorkSafeBC.

Benefits

What types of benefits are provided?

When a worker's claim is accepted, they begin receiving benefits from WorkSafeBC. The type and duration of the benefits depend on the nature of the injury and the work.

- **Wage-loss benefits**
- **Health care benefits**
- **Permanent disability and death benefits**

When do benefits begin?

WorkSafeBC benefits begin immediately:

- The employer is responsible for a worker's wages on the day of injury.
- Wage-loss benefits from WorkSafeBC start the first scheduled shift lost after the day of a work-related injury or disease.
- Health care costs are covered on the day of injury.

When do benefits stop?

Workers receive wage-loss benefits until the case manager concludes they are able to return to work or have recovered from the injury. If an employer can provide light or modified duties, and the doctor agrees it's safe for the worker to do them, they can return to work to those duties.

When can benefits be suspended?

WorkSafeBC benefits can be suspended if:

- The worker does not attend or does not co-operate in a medical examination or program arranged by WorkSafeBC
- The worker participates in any activity that might delay recovery
- The worker refuses treatment recommended by WorkSafeBC
- The claim is fraudulent

Claims information for employers

As an employer, what do I need to do when a worker is injured?

If a worker is injured on the job your responsibilities include:

- **Transporting the injured worker** to the nearest location where medical treatment can be obtained and paying for the transportation.
- **Reporting the incident/injury to the WorkSafeBC** within three business days of the injury's occurrence or within three business days of you or your representative becoming aware of the injury. View **benefits** of submitting your report online. (PDF 146kb)
- **Submitting an Incident and Injury Report** (Form 7) online or completing and sending the **Employer's Report of Injury or Occupational Disease** (PDF 81kb) to WorkSafeBC.
- **You must report fatalities and serious injuries immediately** to our Prevention Emergency Line at 604 276-3301 in the Lower Mainland or toll-free 1 888 621-7233.

If the worker misses work time as a result of his or her injury, ensure that he or she calls **Teleclaim** as soon as possible to report the injury to WorkSafeBC. Otherwise, ensure that he or she completes and submits a **Worker's incident and injury report** or an **Application for Compensation and Report of Injury or Occupational Disease** (Form 6) to WorkSafeBC.

What happens if I don't report a worker's injury?

Failure to report an injury or coercing a worker not to report an injury is an offence against the *Act* and can result in fines.

You're not usually required to report to WorkSafeBC if the worker does not lose time from work and does not seek medical attention. However, **some accidents and incidents** do need to be reported regardless of injuries.

How do I check the status of my worker's claim?

If you are an employer or health care provider you can view the status of a claim, but not wage-loss payment information, using **online claim status**.

Review and appeal

What do I do if I disagree with a decision made by WorkSafeBC on my claim?

If you disagree with a WorkSafeBC decision, you can have request to have it **reviewed**.

The **Claims Review and Appeal Guide for Workers and Dependants** (PDF 77kb) provides detailed information on how workers and dependants can request a review and file an appeal and the **Claims Review and Appeal Guide for Employers** (PDF 80kb) provides detailed information on how employers with claims concerns can request a review and file an appeal.

More FAQs

ARTICLE 19 NO DISCRIMINATION

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.

19.02

(a) Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.

(b) If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

19.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with discrimination. The selection of the mediator will be by mutual agreement.

19.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

ARTICLE 20 SEXUAL HARASSMENT

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from sexual harassment, and agree that sexual harassment will not be tolerated in the workplace.

20.02

(a) Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.

(b) If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

20.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with sexual harassment. The selection of the mediator will be by mutual agreement.

20.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

Jurisprudence

Cyr v. Treasury Board (Department of Human Resources and Skills Development)

2011 PSLRB 35 Before: Renaud Paquet **Decision Rendered:** March 22, 2011

Original Language: French

The grievor filed a grievance against the employer for making it difficult to obtain the accommodation to which she was entitled – the grievor suffered from environmental hypersensitivity, and telework was the accommodation recommended by the physician – a new manager questioned the arrangement – the employer did not provide the grievor with the equipment that she needed to work from home in a timely manner – the adjudicator found that the employer failed in its duty to accommodate by trying to change the grievor's work arrangement without consulting her and by failing to provide the required work tools in a timely fashion – however, the adjudicator found that no harassment had occurred – the adjudicator awarded compensation for pain and suffering and a special compensation under the Canadian Human Rights Act. Grievance allowed.

Panacci v. Treasury Board (Canada Border Services Agency)

2011 PSLRB 2 Before: Ian R. Mackenzie **Decision Rendered:** January 20, 2011

Original Language: English

The grievor alleged that the employer failed to properly accommodate her medical condition, CFS – the adjudicator found that the employer failed to carry out an individualized assessment – the evidence showed that the grievor developed health problems while in her substantive position – she had no problems when in an acting position – the employer relied on one expert's opinion that the problem was motivational rather than health-related – the adjudicator preferred the evidence of the treating physician – the adjudicator ordered the employer to pay the difference in salary and benefits that the grievor had lost for a period because of the lack of proper accommodation.

Grievance allowed.

Giroux v. Treasury Board (Canada Border Services Agency)

2009 PSLRB 45

Before: Barry D. Done

Decision Rendered: April 9, 2009

Original Language: English

In a previous decision, 2008 PSLRB 102, the adjudicator had allowed the harassment grievance and the termination grievance – the parties agreed on the reinstatement date, but not on the period of reinstatement – the parties also disagreed on whether remedies should be granted under the CHRA – the adjudicator ruled that the reinstatement did not end with the beginning of the hearing of the grievance – he also ruled that he could not grant remedies under the CHRA, since the grievance was adjudicated under the PSSRA, which did not give him CHRA jurisdiction.

Order on remedy

Giroux v. Treasury Board (Canada Border Services Agency)

2008 PSLRB 102

Before: Barry Done

Decision Rendered: December 3, 2008

Original Language: English

The grievor had over 30 years of service and had received excellent work appraisals – she sustained an injury at work – after taking time off for a disability leave, she returned to work in modified duties – she alleged in her harassment grievance that the employer was discriminating against her on the basis of her disability – her work performance worsened, and the employer terminated her employment – the adjudicator found the employer had not fulfilled its duty to accommodate – he allowed both the harassment grievance and the termination grievance – he asked for further submissions on the proper date of reinstatement, given that the grievor had been in receipt of disability and pension benefits – he left open the possibility of the parties agreeing to another remedy.

Grievances allowed.

From WorkSafe BC

What to do when a worker is injured

As an employer, your responsibilities when a worker is injured on the job include:

- **Transporting the injured worker** to the nearest location where medical treatment can be obtained. You are also responsible for paying for transportation.

- **Reporting the incident/injury to WorkSafeBC** within three business days of the injury's occurrence or within three business days of you or your representative becoming aware of the injury.
- **Submitting an Incident and Injury Report** (electronic Form 7) or completing and sending the Employer's Report of Injury or Occupational Disease (Form 7 - PDF 270kb) to WorkSafeBC. View benefits of submitting your report online. (PDF 146kb)
- **Reporting fatalities and serious injuries immediately** to our Prevention Emergency Line at 604 276-3301 in the Lower Mainland or toll-free 1 888 621-7233.

If the worker misses work time as a result of his or her injury, ensure that he or she calls Teleclaim as soon as possible to report the injury to WorkSafeBC. Otherwise, ensure that he or she completes a Worker's incident and injury report or sends an Application for Compensation and Report of Injury or Occupational Disease (Form 6) to WorkSafeBC.

When filling out the Incident and Injury Report online or completing the Employer's Report of Injury or Occupational Disease (Form 7), it is important to supply the correct payroll information concerning the injured worker.

Work-related injuries and diseases

A work-related injury or disease is one that arises out of and in the course of employment or is due to the nature of employment.

To be covered by WorkSafeBC a worker must have been working when hurt, and the injury must have been caused by something to do with the job in order to be covered by WorkSafeBC.

For a disease, this means that the disease contracted must be caused by the work or the work environment in order to be covered by WorkSafeBC.

Failure to report

Failure to report an injury or coercing a worker not to report an injury is an offence against the Act and can result in fines. The employer is not usually required to report to WorkSafeBC if the worker does not lose time from work and does not seek medical attention. However, some accidents and incidents do need to be reported regardless of injuries.

Return-to-work and Injury Management programs

Frequently asked questions

1. **How do I start** a return-to-work program?
2. **What are the priorities** for getting an injured worker back on the job?
3. What are **return-to-work tasks**?
4. **When** can an injured worker return to work?
5. **Who can I contact** with concerns about a worker in the return-to-work process?

Return-to-work and Injury Management programs are proactive ways for employers to help injured workers stay at work or return to productive and safe employment as soon as physically possible.

These programs are based on the philosophy that many injured workers can safely perform productive work during the process of recovery. Returning to work is seen as part of the therapy and recovery of the worker. Having a program in place benefits both the worker and the employer in many ways.

Benefits for employers:

- Demonstrates to all workers they are valued employees
- Returns injured workers to work in a safe and timely manner
- Maintains worker/employer relationships
- Reduces the cost of claims, which can help employers be more competitive
- Helps retain healthy and qualified workers
- Reduces the cost of training replacement workers
- Includes the employer in the recovery process for their injured worker.

Return-to-work philosophy

The goal of everyone involved in the rehabilitation process is to have workers return to productive employment as soon as possible. There are three return-to-work possibilities:

1. Same job - same company

The first priority is to attempt to return workers to their former jobs. This allows them to return to familiar faces, places, and routines as well as retain company benefits, seniority, and union membership. Companies also save on training costs for replacement workers.

2. Different job - same company

When it is impossible for workers to return to their former jobs, it may still be possible for them to benefit your company in another position, at an optimal earning level. WorkSafeBC can help identify the best solution and provide the necessary resources and equipment to carry out the plan.

3. Transitional return-to-work strategies

There are a number of ways to ease a worker's transition back into a familiar job or a different job with your company. Financial assistance from WorkSafeBC may be available for:

- **Refresher training or skill upgrading** - the employee has the basic skills but receives additional upgrading where job functions or procedures have changed while the worker was away from the job.
- **A graduated return to work** - the employee works a part-shift or shorter work week and gradually builds up to full time.
- **Work assessment** - a work trial to assess the worker's suitability for the former, modified, or different job.
- **Modified worksite or equipment** - where appropriate, changes can be made to the job functions themselves to accommodate the injury.
- **Training on the job** to provide skills for a new and different job.
- **Formal training** for new and different job.

If an employee faces a lengthy period of physical rehabilitation prior to returning to work, you may suggest that they use the time to full advantage by completing skill upgrading, if necessary. This enhances the worker's prospects for alternate work re-entry, develops a positive focus for the future, and may reduce the compensation costs of training after recovery.

Assistance

If you have questions about the return-to-work process or if a worker refuses to return to work, contact the WorkSafeBC case manager or entitlement officer handling the worker's claim.

Follow-up

Once the worker has returned to the workplace, it is essential that their progress be carefully monitored.

Background:

Public Service Policies concerning Harassment in the Workplace:

The CBSA is committed to providing a work environment where all persons working for the CBSA are treated with respect and dignity. Harassment affects workplace and individual well-being and will not be tolerated. Everyone in the CBSA should enjoy a harassment-free workplace.

The TBS Policy on Harassment in the Workplace reinforces the values of integrity and trust that are the foundation of a sound organization. The *Canadian Human Rights Act* gives every person in the workplace the right to freedom from harassment, based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds. The TBS policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the **Canadian Human Rights Act, including rude, degrading or offensive remarks, e-mails, threats or intimidation. This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the Public Service Labour Relations Act.**

The CBSA offers many options to employees to help resolve potential conflict situations such as the services of the Informal Conflict Management System, which includes access to alternate dispute resolution advisors and mediation. The Human Resources Branch is the entity responsible for the investigative process of harassment cases within the CBSA.

Type 1

Recommendation

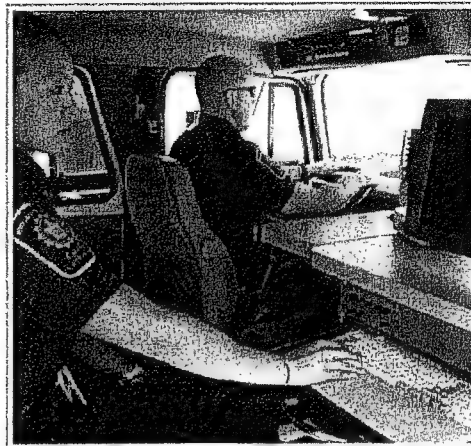
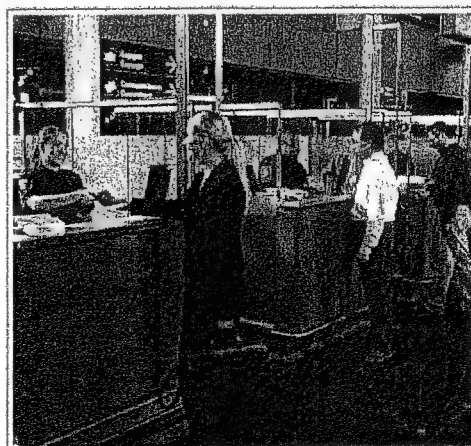
Documents where there are no identified concerns with their release.

CBSA ASFC

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POLICY ON THE DUTY TO ACCOMMODATE



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada



Policy on the Duty to Accommodate

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Introduction

The Canada Border Services Agency (CBSA) recognizes the importance of a diverse workforce, and values its employees and their individual contributions to the Agency's objectives.

It acknowledges that accommodation is a fundamental aspect of the *Canadian Human Rights Act (CHRA)* and that, under the *Employment Equity Act (EEA)* certain reasonable accommodations may be required from time to time to achieve a degree of workforce representation of designated groups.

The policy and guidelines aim to ensure that the CBSA's policies and practices are inclusive from the outset and provide a structured process for dealing with accommodation requests with a view to enabling certain individuals to perform their assigned duties to the best of their ability, in a workplace that is responsive to their individual requirements.

Effective Date

The effective date of this policy is June 16, 2011.

Policy Objective

The objective of this policy is to promote a work environment that is inclusive and non-discriminatory, and to ensure a consistent and coordinated approach to accommodation of its employees in accordance with the *CHRA*.



Policy Statement

CBSA will establish an effective system to ensure an inclusive workplace and the provision of individual workplace accommodation.

CBSA is committed to ensuring that:

- All employees and candidates will be able to contribute their skills and experience to the organization;
- All business activities, including policies, practices, procedures or procurements are non-discriminatory; and that
- employees and candidates are advised about their right to accommodation pursuant to the *CHRA*.

CBSA will respond in a timely, confidential and effective manner to requests or requirements for individual accommodation in order to ensure full and productive participation in the workplace.

Application

This policy applies to all CBSA employees,¹ persons participating in staffing processes carried out by the Agency and employees covered by the *CHRA*.

Legal Framework

The policy is intended to address certain of the Agency's responsibilities and obligations stemming from the *CHRA* and the *EEA*.

The *EEA* requires that in implementing employment equity employers make such reasonable accommodations as will ensure that persons in designated groups (women, aboriginal peoples, persons with disabilities and visible minorities) achieve a certain degree of representation in each occupational group in the Agency's workforce.

The CBSA is also committed under the *EEA* to achieving workforce representation and correcting the conditions of disadvantage in employment experienced by the designated groups (women, aboriginal peoples, persons with disabilities, and visible minorities) by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

¹ Definition glossary page 4



The CHRA stipulates that it is a discriminatory practice, directly or indirectly, (a) to refuse to employ or continue to employ any individual, or (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. The prohibited grounds under the CHRA are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted. The CHRA imposes an obligation on employers to provide reasonable accommodation to employees to the point of undue hardship in respect of prohibited grounds under the Act.

The CHRA also establishes the extent of the duty to accommodate, stating "it is not a discriminatory practice if (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by the employer to be based on a *bona fide occupational requirement*;"²

Definitions

In this policy:

Bona fide occupational requirement (BFOR)

A *bona fide* occupational requirement (BFOR) is a standard or rule that is integral to carrying out the functions of a specific position. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship.

Candidate

Includes applicants from within and from outside the federal public service, as well as existing employees who are participating in a staffing process.

Duty to Accommodate

Refers to the obligation of the employer to take steps to mitigate disadvantage to employees and candidates resulting from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the CHRA. Needs that must be accommodated to the point of undue hardship result from the following grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Employees

Includes full-time, part-time, casual, seasonal (on season), term and indeterminate employees.

² Definition glossary page 4.



Employment and employment-related opportunities

Includes appointments, promotions, secondments, assignments and training and career development opportunities.

Medical Practitioner

A medical professional as recognized by and meeting the licensing requirements under the Public Service Health Care Plan:

<http://www.njc-cnm.gc.ca/directive/index.php?did=9&lang=eng>.

Selection Processes

Includes internal or external advertised or non-advertised selection processes that result in a permanent or temporary appointment or deployment, an assignment, secondment or a training or career development opportunity. Selection processes encompass all related activities such as establishing qualifications, advertising, assessment, giving notice of an appointment recourse, as well as any related communications with candidates.

Undue Hardship

Describes the limit, beyond which organizations are not expected to accommodate.

Section 15 (2) of the *CHRA* states that "it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost".

Work-related events

Work-related events include conferences, retreats, work-sponsored social events, seminars and information sessions, whether conducted inside or outside the workplace.

Roles and Responsibilities

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.

The Director General, Labour Relations and Compensation Directorate will ensure the proper application and interpretation of this Policy.

Employee or Candidate will:

- Inform his/her manager/supervisor of his/her accommodation needs;
- Inform his/her manager/supervisor if their needs change or if the accommodation is no longer sufficient or required, including returning of equipment if no longer needed;



- Collaborate with his/her manager/supervisor and any other stakeholder to find the most appropriate accommodation to meet his/her needs;
- Provide supporting documentation (e.g, medical certificate indicating the individual's functional limitations and projected duration) if there are restrictions or the accommodation needs cannot be clearly determined;
- Accept a reasonable accommodation option when it meets their identified needs;
- Provide a rationale for not accepting a reasonable offer of accommodation.

Managers/Supervisors will:

- Consult with the employee/candidate to determine the nature of the accommodation required;
- Engage in an individualized assessment of the employee's need for accommodation and address each request on a case by case basis;
- Consult with the Regional Disability and Accommodation Case Coordinator (DACC) where appropriate;
- Take an active role in exploring and considering options/alternative approaches and solutions to accommodate the employee/candidate;
- Initiate the accommodation procedure where she or he has knowledge of an employee or candidate's need for accommodation, but is unable for any reason to state that need;
- Consider all options for meeting accommodation needs, including adaptive technology or devices, modified work stations, quiet space for prayer, altered work schedules, etc.;
- Where addressing the accommodation request will take some time, consider at an early stage, whether there are interim measures which could be put in place on a temporary basis;
- Identify when access to the National Job Accommodation Fund may be required;
- Respect the employee's right to confidentiality and keep information/medical records confidential and ensure that all records are stored in a locked space;
- The manager is responsible for consulting with the bargaining agent where the employee being accommodated requests that the bargaining agent be consulted, or in situations where there is an impact on other bargaining unit members or on the collective agreement. The manager will do so in addition to consulting with the appropriate HR advisors and, if required, senior management;
- Grant accommodation requests in a timely manner, up to the point of undue hardship, by providing the employee/candidate with a reasonable offer of accommodation and associated transition plan (if required);
- Follow up on requests for temporary or permanent accommodation;
- Monitor the accommodation plan/agreement if the circumstances change or the solution is no longer working;
- Provide access to training on use of any upgraded or new adaptive technology/equipment;



- Ensure that work-related events are fully accessible to all participants, up to the point of undue hardship.

The Bargaining Agent is expected to:

- Facilitate the accommodation needs of their members by supporting the reasonable efforts of the employer to accommodate an employee up to the point of undue hardship;
- Contribute to the review of corporate policies, procedures, practices, and activities to identify and recommend changes;
- Foster an environment in which accommodation needs can be communicated;
- Support, with the agreement of the person requesting accommodation, reasonable measures that result in the least disruption to operations while meeting the needs of the person requesting accommodation subject to undue hardship.

Human Resources:

Labour Relations and Compensation Directorate will:

- Act as a resource to interpret, advise and consult on the CBSA Policy on the Duty to Accommodate, and related acts, regulations, policies and practices related to accommodation;
- Consult with the bargaining agents on accommodation issues, as required;
- Assist management in responding to complaints or grievances related to duty to accommodate issues;
- Manage the National Job Accommodation Fund.

National Coordinator, Disability and Accommodation Case Management Program will:

- Lead in the delivery and management of the duty to accommodate program;
- Consult and collaborate with employee representatives, senior/middle management, supervisors and employees, and with central agencies on the various policy aspects and issues pertaining to accommodation in the workplace;
- Monitor, evaluate and report on the implementation of the duty to accommodate within CBSA through quarterly status reports prepared by the regional DACCs;
- Monitor requests for accommodation on an ad hoc basis to ensure the policy and procedures have been correctly applied;
- Recommend, develop and implement communication plans and education, training and awareness sessions on the duty to accommodate;



- Monitor quarterly reports for trends, issues and to evaluate the effectiveness of the duty to accommodate program;
- Review the policy on an annual basis and revise as required.

National Employment Equity & Diversity Program will:

- Act as a resource to interpret and consult on the requirements of the Employment Equity Act;
- Promote diversity in employment policies, procedures and practices and assist in human resources planning to help create and maintain a workforce that is inclusive and representative reflecting labour market availability.

Corporate Resourcing will:

- Promote diversity during the selection process, and ensure that national selection standards and assessment tools do not constitute barriers, and that candidates are provided with appropriate accommodation.

Staffing Advisors will:

- Consult with specialists from the Personnel Psychology Centre concerning information, guidance and recommendations on assessment accommodation matters for Public Service Commission (PSC) tests, or for guidance on accommodating individuals when using agency tools;
- Assist in the provision of duty to accommodate measures.

Regional Human Resources Directors will:

- Ensure that processes and systems are in place to manage the delivery of the duty to accommodate program in their respective regions;
- Monitor and evaluate the effectiveness of the regional delivery of the duty to accommodate program.

Regional Disability and Accommodation Case Coordinator (DACC) will:

- Manage and coordinate the regional CBSA duty to accommodate program;
- Administer and communicate associated duty to accommodate policies, expectations and practices;
- Collaborate with all stakeholders to develop strategies for the retention of employees with accommodation needs;



- Coordinate with compensation & benefits professionals within and external to CBSA to synchronize information provision as it relates to duty to accommodate requirements;
- Obtain or coordinate evaluations and services including functional job assessments, functional capacity evaluations, ergonomic assessments, etc;
- Assist CBSA employees and managers with permanent, temporary and/or transitional work options and reasonable accommodation measures;
- Act as a resource for CBSA employees, supervisors and managers to interpret and consult on Federal, Provincial and CBSA regulations, policies, practices and bargaining agent agreements relating to the duty to accommodate in the workplace;
- Maintain status reports on the management of duty to accommodate cases in their respective regions;
- Keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.

Regional Employment Equity Coordinators will:

- Refer duty to accommodate inquiries and cases to the Regional Disability and Accommodation Case Coordinator.

Recourse

If an accommodation request has been denied and the employee or candidate is not satisfied with the response of the manager or selection board, employees and candidates are encouraged to communicate with their manager or selection board. All parties are encouraged to utilize alternative dispute resolution approaches in order to resolve their concerns.

The employee should utilize all internal avenues, i.e. informal complaint, ICMS (informal conflict management system), bargaining agent (if applicable), grievance process, before considering a complaint to the Canadian Human Rights Commission (CHRC). Note that it is the employee's responsibility to consult the relevant collective agreement, terms and conditions of employment or legislation to determine the time limits for seeking recourse.

Monitoring and reporting

Labour Relations and Compensation Directorate will monitor the application of this policy and take any corrective measures required to ensure compliance.

The Regional DACCs will keep records of all requests for accommodation as detailed in Appendix A, and provide reports to Labour Relations and Compensation Directorate as may be required by the central agencies or any other authority.



All documents relating to specific requests for accommodation will be kept confidential and will only be disclosed with the consent of the employee or candidate. The CBSA will comply with all requirements of the *Privacy Act* to protect personal information.

References

Canadian Human Rights Act

Employment Equity Act

Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service

Guide for Assessing Persons with Disabilities - How to determine and implement assessment accommodations, Public Service Commission

A Place for All: A Guide to Creating an Inclusive Workplace, Canadian Human Rights Commission

Note: This policy is available in alternative formats upon request.



Appendix A

Process for Duty to Accommodate Requests

Each case must be assessed on a case-by-case basis, which means that each case must be considered individually. Even where an employee does not make a formal request for accommodation, the employer may have an obligation to offer it in certain circumstances.

Managers, Regional DACCs, and employees seeking accommodation are encouraged to work in collaboration and to benefit from available resources, such as any local, regional, or national association dedicated to providing education, accommodation services, disability specific information, or some combination of these (e.g. the Canadian National Institute for the Blind (CNIB), the Canadian Hard of Hearing Association (CHHA)).

1. Employee makes a verbal request for accommodation to his/her supervisor/manager.
2. To facilitate the duty to accommodate process, an employee should make his/her request in writing along with appropriate supporting documentation and additional information to his/her supervisor/manager if he/she:
 - Requires long-term, extensive accommodation or changes to the physical work space;
 - Requires a flexible work arrangement as part of the accommodation;
 - Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.
3. The supervisor/manager should consult with the employee in order to seek any clarification or discuss initial options for a reasonable accommodation.
4. The supervisor/manager reviews the request and consults with the Regional Disability and Accommodation Case Coordinator who may in turn seek advice from other relevant subject matter experts (e.g. assets/accommodation section, Corporate Labour Relations, Uniforms Program, Arming, Resourcing, etc.).
5. Supervisors/managers may also consult with qualified professionals/stakeholders, with the employee's consent, to determine the best accommodation to meet the employee's needs.



6. Review accommodation options available first at level or, if required, at a lower level after all other avenues have been exhausted.
7. Where a supervisor/manager sees that addressing the accommodation request will take some time, he or she should consider at an early stage whether there are interim measures which could be put in place on a temporary basis.
8. The supervisor/manager should consult with his/her respective manager if the request will affect the operational functioning of the division/branch/region etc.; or could entail an undue hardship including a potentially significant financial implication to the organization. The supervisor/manager should also review the criteria for reimbursement of costs from the National Job Accommodation Fund.
9. If the proposed accommodation measure is satisfactory to the employee, the accommodation will be provided and if necessary, documented with an accommodation plan. The employee and the supervisor/manager will both sign the plan.
10. The manager will provide details in writing to justify a decision where an accommodation has been denied.
11. The supervisor/manager should keep a record of the various accommodations proposed and the reason for accepting or rejecting each option.

Managers will allow employees with specific needs to retain the technical aids, equipment and support materials as long as they are in the federal public service (This means permitting employees to take the equipment with them when they move to another department, agency, branch, division or unit).

Notes:

Medical information should be provided by the employee's medical practitioner, where applicable, and should include a description of the employee's functional limitations and/or restrictions as they relate to their duties as well as whether it is likely to be a permanent or temporary situation. Supervisors and managers cannot request specific information on diagnosis or treatment details.

Where an employee's own medical practitioner is not able to determine the information required on the medical certificate, or clarification of functional limitations is needed, it may be necessary to refer the employee to Health Canada or other expert advisors for an evaluation.



All medical information is confidential; it is to be stored in a locked space and kept separate from the employee's personnel file. Access to this information should be limited and shared only on a need-to-know basis with the consent of the employee.

Although managers (and those providing the accommodation) are authorized to access information pertaining to the functional limitations imposed by an employee's accommodation needs, they are generally not at liberty to know the diagnosis. However, the manager may ask for clarification of the limitations/restrictions should the employee or the medical practitioner not provide sufficient information.



Appendix B

Duty to Accommodate during a Selection Process

1. Managers and Human Resources will ensure that the Standards for selection and assessment do not discriminate on any prohibited ground of discrimination.
2. Regional Human Resources will ensure that candidates are informed of their right to accommodation.
3. Regional Human Resources will inform candidates in a timely manner of the evaluation tools that will be used, in order that the candidates may identify a need, where applicable.
4. Regional Human Resources will ensure that all employment opportunities are available in an accessible format.
5. Regional Human Resources and hiring managers will ensure that the assessment methods or tools used in the staffing process, including tests and interviews, accurately assess the qualifications required, do not constitute a rule, practice or physical barrier that has, or may have, an impact on individuals or groups protected under the *CHRA*, or on designated group under the *EEA*, and that they assess candidates fairly.
6. Once the candidate requests an accommodation, Management and Regional Human Resources will consult with the candidate to identify the nature of the accommodation and, if necessary, consult appropriate health care professionals and others with the candidate's consent, to determine the appropriate accommodation for that person.
7. Managers and Human Resources (HQ and Regions) may consult and collaborate with bargaining agents or other employee representatives where an employee being accommodated requests that a bargaining agent or other employee representative be consulted, when required.
8. All parties will respect the candidate's right to privacy and confidentiality and accommodate up to the point of undue hardship.



Appendix C

Procedure for Accessing the National Job Accommodation Fund

The National Job Accommodation Fund

The Canada Border Services Agency (CBSA) National Job Accommodation Fund has been established to cover certain costs of the duty to accommodate for CBSA employees. Only duty to accommodate costs of \$500.00 or more are covered by the fund.

Criteria

Note: Standard office equipment/furniture such as ergonomic chairs, 17 inch monitors, and standard height adjustable workstations are not covered by the fund.

Examples of eligible costs

This list is not exhaustive; there may be other eligible costs based on the employee's individual circumstances. Please consult with your Regional DACC.

- Adaptive Technology (hardware and software)
- Custom furniture, equipment
- Interpreters for deaf and hearing-impaired employees
- Sign language training for co-workers
- Alternate formats for printed material (Braille, large print documents)

Submitting a request

Employees

Upon advising your manager of your accommodation needs that may incur certain expenses, complete a Request to Access the National Job Accommodation Fund (NJAF) form and submit it to your manager along with any required supporting documentation.

Managers

Review the information on the NJAF form and request clarification/additional information/documents, if necessary. Submit completed Accommodation Forms and supporting documentation to your Regional DACC for processing by Labour Relations and



Compensation Directorate or if there is no local coordinator in your area, please submit the request directly to:

National Coordinator, Disability and Accommodation
Case Management Program
Labour Relations and Compensation Directorate
99 Metcalfe Street, 3rd Floor
Ottawa, ON K1A 0L8

Approval Process

1. The National Coordinator, Disability and Accommodation Case Management Program will review the request and, based on the information provided, will approve it, reject it, or notify the Regional DACC or manager that additional information is required before a decision can be reached.
2. Upon approval, the manager will be granted authority to charge applicable costs to a specified financial code that will be provided at the time of approval. If the cost has already been incurred, the amount will be reimbursed to the manager's budget.



Appendix D

Questions and Answers

What does Bona Fide Occupational Requirement (BFOR) mean?

A BFOR is a requirement of the job that is adopted in good faith and which is reasonably necessary for the accomplishment of a legitimate work-related purpose. For a standard to be considered a BFOR, an employer has to establish that any accommodation or changes to the standard would create an undue hardship. For example, an airline may require its pilots to have a certain level of uncorrected vision, hearing, and manual dexterity in order to land a plane with all its passengers, safely, without instruments in an emergency. Although this requirement could prevent persons with certain disabilities from being a pilot, this standard is essential to carrying out the duties of a pilot's job.

What does undue hardship mean?

Undue hardship describes the limit, beyond which organizations are not expected to accommodate. Section 15(2) of the *CHRA* states that "it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and costs."

Who is responsible for requesting accommodation?

The responsibility for requesting accommodation rests with the person requiring accommodation. Although the accommodation solution shall remain a decision mutually agreeable to all parties involved, the person requiring accommodation should also explain the sorts of accommodation he or she considers appropriate, which will be supported by medical professionals where necessary.

The duty to accommodate process is a shared responsibility between the employer, employee and bargaining agent. Where an employer has initiated a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate, the person requiring accommodation has a duty to facilitate the implementation of the proposal.

If an employee does not acknowledge a need for accommodation and a manager suspects the employee is suffering from some addiction or condition that is impacting the workplace or the employee's work performance, the manager should make inquiries, inform the employee that



there are services to help (e.g. EAP) and offer to accommodate the employee. The types of behaviours could include persistent lateness, change in behaviour that is causing problems with co-workers or managers, missed meetings or deadlines, etc. It is recommended the manager keep a record of all meetings with an employee who denies the need for accommodation (it is advised that this record be shared with the employee for understanding, clarification and acceptance of what has transpired during the meeting). Should the employee's health issue be such that it affects the employee's ability to perform his/her duties and/or poses a health and safety risk, the manager should contact his/her Regional Labour Relations Advisor for further guidance.

Managers should also ask if any accommodation is needed when an employee is returning to work after a lengthy absence, even if the employee hasn't requested it.

How do employees/candidates request accommodation?

An employee may request an accommodation by speaking with their supervisor/manager and/or completing the request for accommodation form (see Appendix A: "Process for duty to Accommodate Requests"). The supervisor/manager reviews the request and consults with appropriate advisors (e.g. regional human resources advisors, assets/accommodation section, Disability & Accommodation Case Coordinator). If the accommodation request is denied, the reasons should be clearly communicated by the supervisor/ manager (in writing) to the employee.

An employee should make his/her request in writing to their manager if he/she:

- Requires long-term, extensive accommodation or changes to the physical work space;
- Requires a flexible work arrangement as part of the accommodation;
- Is a person with a disability and requires any form of accommodation (see the Treasury Board Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service);
- Or if he/she has not received a satisfactory response to an initial verbal request for accommodation.

Candidates in a selection process must request accommodation by informing the staffing advisor, assessment board member or hiring manager of their accommodation need. Candidates should request accommodation for each stage of assessment where accommodation is needed.



Are Employees entitled to accommodation for needs other than disability?

Yes. Accommodation may also be appropriate on the basis of other grounds including religion, marital or family status

For example, employees' religious beliefs may require them to be absent from work on days of religious observances, to have prayer breaks during working hours, to observe a certain dress code, or to follow a certain dietary plan. In order to accommodate employees who request time off for religious obligations, managers should consider a number of flexible working arrangements.

Other employees may require accommodation based on marital or family status. Employers have the same responsibility to accommodate an employee's family status including family responsibilities, such as:

- Allowing for leave without pay for the care of family;
- Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- Providing suitable options to allow breast feeding as required.

Additional information is available from the Canadian Human Rights Commission website or by contacting regional DACCs.

All examples of accommodation related to leave should be reviewed in accordance with the collective agreement.

What are some examples of possible accommodations?

The duty to accommodate is often identified with the removal of physical barriers or the provision of technical devices within the workplace. However, changes to existing policy and procedure can also create the need for accommodation. An accommodation measure may be as simple as adaptive technology, modifying the work, or exchanging job tasks with other employees.



Examples of accommodation measures include, but are not limited to, the following:

- Adaptive technology;
- Providing work space and furnishings appropriate to the nature of the disability;
- Flexible work arrangements;
- Providing interpreters for deaf and hearing-impaired employees;
- Converting printed matter to alternative media and reader services for employees who are visually impaired;
- Changes to work sites;
- Attendant services;
- Provision of alternate formats (e.g. Braille, large print documents, etc.);
- Bundling duties;
- Additional time to write a test.

Note: These examples may not be applicable in all cases, and individual accommodations will be determined based on the needs of the employee as well as operational requirements. Reasonable accommodation will be provided to the point of undue hardship.



Appendix E

Duty to Accommodate on the Basis of Family Status

Definition:

Family status is one of the prohibited grounds of discrimination covered by the *Canadian Human Rights Act*. The Canadian Human Rights Commission defines "Family Status" as follows:

"Family status" refers to the inter-relationship that arises from bonds of marriage, consanguinity or legal adoption, including of course, the ancestral relationship, whether legitimate, illegitimate, or by adoption, as well as the relationships between spouses, siblings, in-laws, uncles or aunts, and nephews or nieces, cousins, etc.

Discrimination related to the fact that spouses work together for the same employer may be considered under the grounds of both marital status and family status."

As set out in the remainder of this appendix, in the context of family status, accommodation can be associated with caregiving needs.

Needs related to caregiving:

An individual's caregiving needs will vary over the course of a lifetime. The nature of the needs associated with caring for children will be, for example, significantly different from the nature of the needs associated with caring for an aging parent. Some needs will remain stable over lengthy periods of time, while others may be short term or temporary.

Not every circumstance related to caregiving will give rise to a duty to accommodate. Where rules, requirements, standards or factors have the effect of disadvantaging persons who have substantial caregiving responsibilities related to their family status, either by imposing burdens that are not placed on others or withholding or limiting access to opportunity, benefits or advantages available to others, a duty to accommodate caregiving needs related to family status may arise.

Assessment of accommodation requests based on caregiving needs:

Each request must be reviewed on an individual basis and assessed on its own particular facts. Managers, supervisors and all those involved in the accommodation process should follow the steps outlined in "Appendix A Process for Duty to Accommodate Requests" of this policy.



When assessing requests based on caregiving needs, supervisors and managers should consider the both the nature of the caregiving responsibility and the conflict between that responsibility and the organization's rules, requirements, standards, processes or other factors, on a case-by case basis.

The more substantial the caregiving obligation at stake, the more likely it is that a duty to accommodate will arise.

Roles and responsibilities:

Accommodation is a multi-party process. Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement reasonable accommodation solutions.

---- Employer's obligation:

Employers have the same responsibility to accommodate an employee's family status as they do for other protected characteristics, such as disability or religion. This means that employers must accommodate employees who experience adverse differentiation as a result of workplace standards, policies or practices because of their family status.

As with other prohibited grounds of discrimination, CBSA must accommodate an employee's family status accommodation request up to the point of undue hardship.

--- Employee's obligation

The person seeking accommodation has a responsibility to inform his or her manager of their accommodation needs based on family status and that there is a conflict between those needs and the organization's rules, requirements, standards, processes or procedures.

An individual seeking accommodation for family obligations must demonstrate that he or she has made real and diligent efforts to deal with the conflict between work and family obligations. For example, persons seeking accommodation based on caregiving needs may be expected to make reasonable efforts to first explore and avail themselves of outside resources available to them, such as daycare and community services, and/or to explore other options available to them, such as seeking the assistance of family members, prior to submitting an accommodation request to their supervisor or manager, except in emergency situations.

Examples of accommodation on the basis of family status:

Most family status accommodation is a matter of flexibility. It may be made available on a one-time basis, or on a temporary or ongoing basis, depending on the circumstances.



As previously stated, each case must be assessed on an individual basis. Depending on the particular accommodation needs, the following options could be considered:

- Allowing for leave without pay for the care of family;
- Allowing for paid leave to care for sick family members, as provided in the relevant collective agreement;
- Allowing for alternative work arrangements such as adjusted hours of work, compressed hours, job sharing, part-time work and alternate work locations;
- Not penalizing employees who cannot accept overtime work because of special needs relating to family status;
- Providing suitable options to allow breast feeding as required.

When considering suitable leave options, it should be noted that managers and supervisors do not have to provide paid leave to employees who need to be away from the workplace during regular working hours unless there are suitable provisions to that effect in the relevant collective agreement or terms and conditions of employment.

Inflexible, excessive, or unpredictable work hours may pose barriers to persons with caregiving responsibilities. For example, given that many daycares operate from 8:00 a.m. to 6:00 p.m., some employees with small children may find it difficult to comply with a work schedule that requires them to start precisely at 8:00 a.m. Of course, there will be circumstances where the nature of the work demands specific start, finish and break times. Where such timetables are not a *bona fide* occupational requirement, supervisors and managers should consider adjusting hours of work to accommodate their employees' needs.

Where social supports for childcare, eldercare or for persons with disabilities are limited, employees with substantial caregiving responsibilities may require accommodations to shift scheduling.

For example, in situations where two parents with caregiving responsibilities work shifts, the following measures could be considered:

- Arranging shift schedules so the parents do not have overlapping shifts;
- Offering an assignment to an area that does not require shift work;
- Adjusting hours of work to coincide with hours where caregiving is available;
- Agreeing to an employee's request for part-time work.



In a situation where an employee working shifts also has a spouse working shifts elsewhere, supervisors and managers should make enquiries as to the elements of the spouse's work that are relevant to the employee's need for accommodation.

Note: The material in this appendix has been copied and/or adapted from material found on the Canadian Human Rights Commission's and the Ontario Human Rights Commission's websites



Communications Policy of the Canada Border Services Agency

*(Publié aussi en français sous
le titre Politique de
communication de l'Agence des
services frontaliers du Canada)*

Approved
April 18, 2011

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Canada Border
Services Agency

Agence des services
frontaliers du Canada

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1. Effective date

1.1 This policy takes effect on April 1, 2011.

2. Application

This policy applies to all employees of the Canada Border Services Agency (CBSA).

3. Context

3.1 The mandate of the CBSA – enforcement and facilitation – presents a unique challenge to the communications function within the Agency. In any given context, a balance must be struck to ensure that messaging equally reflects both the enforcement and facilitation aspects of what the CBSA does. This balance is not always easy to achieve.

3.2 The CBSA is very visible to Canadians, many of whom form an opinion about the Agency through a personal experience. The work of the Agency also deals with issues important to all Canadians: safety and security, economic prosperity, and immigration. As a result, the CBSA is prominent in the media on a daily basis. The main goal of the communications function is to help ensure that Canadians understand the programs and services provided by the CBSA, either by equipping them with the right information to use our services, or by ensuring, as much as possible, balanced and objective coverage in the media.

3.3 Unlike many other federal government departments, the nature of the CBSA's mandate is operational and 24/7 – our border never closes. This necessitates a communications function that can provide service in this 24/7 environment, and rapidly change priorities to react as required. At the same time, the communications function must ensure that its services and activities are well-planned and measured to meet long-term objectives. This tension between the reactive and the proactive, and the necessity to ensure that both are in balance, requires that the communications function is governed by well-developed strategic planning, performance measures, and appropriate policy and guidance documents.

3.4 Although communications to the Canadian public are of primary importance, strong internal communications within the CBSA is also an essential factor in the success of the Agency's mandate, programs and services. Internal communications is a responsibility shared by all managers and all employees within the CBSA. It is characterised by information sharing, both horizontally

and vertically; maintaining a collaborative and open dialogue between employee and manager; listening to employee ideas; and encouraging employees to participate in a conversation. The communications function can foster internal communications through various tools and communications activities, but responsibility for strong internal communications ultimately rests with managers and employees at all levels of the organization.

- 3.5 The President of the CBSA has designated the Director General, Communications Directorate as the functional authority for the communications function within the Agency. This confers on the Director General, Communications Directorate all accountabilities and responsibilities outlined in the Communications Policy of the Government of Canada, including managing corporate identity (including branding), advertising, publishing, public opinion research, and media relations. Functional authority also confers upon the Director General, Communications Directorate other responsibilities concerning the management of the communications function within the Agency. These accountabilities are outlined in this policy.
- 3.6 This policy defines the high-level accountabilities of specific individuals or groups for the communications function within the CBSA. These accountabilities are expressed as requirements. Requirements describe what specific individuals and groups are accountable for, but do not describe how the accountabilities will be executed. The how will be defined through: strategic communications planning and performance measurement; the development of tools and programs; and the publishing of directives, standard operating procedures and guidelines for specific communications activities and services governed by this policy.
- 3.7 This policy must respect all requirements of the Communications Policy of the Government of Canada.

4. Definitions

Definitions to be used in the interpretation of this policy are found in the Appendix.

5. Policy statement

5.1 Policy objective

The purpose of this policy is to ensure that the communications function within the CBSA is comprehensive, well planned, effectively managed, and consistent with the Communications Policy of the Government of Canada.

5.2 Expected results

The following are the expected results of the application of this policy:

5.2.1 Internal and external audiences receive credible, complete and timely information on the CBSA's mandate, its programs and services using a wide variety of mechanisms.

5.2.1.1 The communications function within the CBSA is well-coordinated, well planned and its effectiveness is measured to improve performance; and

5.2.1.2 The communications function is directed by clear governance structures and policy instruments that ensure an efficient and consistent level of service delivery.

5.3 Principles

Implementation of this policy is to be guided by the following principles:

- i) Information provided to the Canadian public on the CBSA's programs, services and initiatives is objective, non-partisan, and is provided in both official languages.
- ii) The communications function reflects the CBSA's 24/7 operating environment.
- iii) Communications activities fully respect the CBSA's values and ethics.
- iv) The communications function employs appropriate technological and innovative communications vehicles to reach its audiences.
- v) An equal emphasis is placed on communicating internally as externally about the Agency's programs, services and initiatives.
- vi) Fostering strong internal communications within the Agency is the responsibility of employees at all levels. The communications function promotes the open and collaborative sharing of information through advice, tools and message development.
- vii) Communications employees work effectively with portfolio partners and other stakeholders to ensure that the CBSA is properly represented.

6. Policy requirements

6.1 Requirements of the Director General, Communications Directorate

Implementing the *Communications Policy of the Government of Canada*

The Director General, Communications Directorate is responsible for:

- 6.1.1 ensuring that the policy requirements of the Communications Policy of the Government of Canada are implemented within the CBSA.

Planning, monitoring and safeguarding the communications function

The Director General, Communications Directorate is responsible for:

- 6.1.2 setting objectives, outcomes and performance expectations for the communications function across the Agency through formal strategic communications planning;
- 6.1.3 monitoring and assessing the effectiveness and efficiency of communications activities and services using a performance measurement program;
- 6.1.4 ensuring that communications activities and services are consistently delivered across the Agency by developing and maintaining appropriate policy instruments and guidance documents;
- 6.1.5 monitoring and assessing policy instruments on a regular basis to ensure efficiency and effectiveness; and
- 6.1.6 ensuring the continuity of the communications function in the event of a crisis or an emergency situation through crisis communications planning, and business continuity planning.

Maintaining an integrated communications function across the CBSA

The Director General, Communications Directorate is responsible for:

- 6.1.7 ensuring that communications considerations are integrated into the decision making processes within the Agency at all levels;
- 6.1.8 ensuring that the budget envelope for the communications function within the Agency is managed effectively to show appropriate stewardship, efficiency and value for money;
- 6.1.9 establishing appropriate staffing and resource allocations for the communications function across the Agency and seeking the approval of the Executive Committee¹;

¹ As part of his/her accountability for regional operations, the Vice-President of Operations provides a further oversight role in the allocation of resources to the communication function in the regions. This is in addition to the general requirements outlined for vice-presidents at 8.1.

- 6.1.10 negotiating communications services with branch and direct report senior management to establish levels of communications support; to ensure that communications considerations are integrated into annual planning cycles; and that appropriate resources are allocated to branch/direct report communications projects and activities; and
- 6.1.11 reporting to the President of the CBSA about the performance of the communications function across the Agency.

6.2 Monitoring and reporting requirements

The Director General, Communications Directorate is responsible for:

- 6.2.1 establishing performance expectations and monitoring compliance with this policy and the Communications Policy of the Government of Canada;
- 6.2.2 ensuring appropriate remedial action is taken to address any deficiencies and gaps; and
- 6.2.3 informing the President, in a timely manner, of communications management concerns and incidents of non-compliance with this policy and its instruments, or with the Communications Policy of the Government of Canada, that may cause embarrassment to the Minister of Public Safety and the Government of Canada, or damage to the integrity, credibility and reputation of the CBSA.

7. Consequences

- 7.1 The Director General, Communications Directorate is responsible for addressing issues that arise regarding compliance with this policy, and with its associated directives and standard operating procedures, and ensuring that appropriate remedial actions are taken to address these issues.

8. Roles and responsibilities of other individuals and groups

This section identifies other individuals and groups that have requirements related to this policy.

8.1 Vice-presidents and direct reports to the President

Vice-presidents and direct reports are responsible for:

- 8.1.1 integrating communications considerations and planning into all stages of decision making and program and project development within their branches or direct reports;
- 8.1.2 negotiating communications services with the Communications Directorate to establish levels of communications support and to ensure that communications considerations are integrated into annual planning cycles, and that appropriate resources are allocated to communications projects and activities; and
- 8.1.3 ensuring compliance to all communications-related policies, directives and standard operating procedures governing branch/direct report communications activities.

8.2 Regional directors general

Regional directors general are responsible for:

- 8.2.1 integrating communications considerations and planning into all stages of decision making, and program and project development and delivery within their regions;
- 8.2.2 setting annual performance expectations for the regional communications function jointly with the Director General, Communications Directorate;
- 8.2.3 ensuring the resource levels approved by the Executive Committee are assigned to the communications function within their regions; and
- 8.2.4 ensuring compliance to all communications-related policies, directives and standard operating procedures governing regional communications activities and services.

8.3 Directors of communications, Headquarters

Directors of communications, Headquarters are responsible for:

- 8.3.1 planning, monitoring and assessing the communications function within their divisions based on annual performance expectations, objectives and priorities set by the Director General, Communications Directorate through Agency-level strategic communications planning;
- 8.3.2 developing appropriate policy instruments to govern the communications services and activities within their divisions, monitoring their effectiveness, and keeping them up-to-date; and

- 8.3.3 ensuring compliance to all policies, directives and standard operating procedures applicable to communications activities and services within their divisions.

8.4 Program Planning and Integration Division directors²

Program Planning and Integration Division directors are responsible for:

- 8.4.1 reporting to regional directors general on the overall management and administration of the communications units under their responsibility and whether performance expectations are being met;
- 8.4.2 ensuring that resources allocated to the communications units under their responsibility are expended according to levels set jointly by regional directors general and the Director General, Communications Directorate; and
- 8.4.3 ensuring compliance to all policies, directives and standard operating procedures applicable to communications activities and services within their units.

8.5 Regional managers of communications

Regional managers of communications are responsible for:

- 8.5.1 planning, implementing, monitoring and assessing the regional communications function based on annual performance expectations, objectives and priorities set jointly by the regional directors general and the Director General, Communications Directorate through Agency-level strategic communications planning;
- 8.5.2 reporting to Program Planning and Integration Division directors and the Director General, Communications Directorate on the performance of the communications function within their regions; and
- 8.5.3 monitoring compliance to all policies, directives and standard operating procedures governing regional communications activities and services.

² Requirements outlined at 8.4 also apply to Corporate Directors in regions where the communications function falls under their authority.

8.6 Managers of communications

Managers of communications are responsible for:

- 8.6.1 planning, implementing, monitoring and assessing the communications function within their units based on annual performance expectations, objectives and priorities set by directors of communications;
- 8.6.2 reporting to directors of communications on the performance of the communications function within their units; and
- 8.6.3 ensuring compliance with all communications-related policies, directives and standard operating procedures governing communications activities and services within their units.

8.7 All CBSA employees

All CBSA employees are responsible for:

- 8.7.1 assessing the requirements for communications planning at all stages of decision making, and program and project development under their responsibility, and consulting communications staff in their regions or communications staff in the Communications Directorate as appropriate; and
- 8.7.2 complying with all policies, directives and standard operating procedures applicable to communications activities and services.

9. References

9.1 Related legislation and policies³

Communications Policy of the Government of Canada (and applicable legislation)
Official Languages Act
Access to Information Act
Privacy Act
Immigration and Refugee Protection Act
Customs Act

9.2 Related CBSA directives, standard operating procedures and guidelines

This list will be amended as new directives, standard operating procedures and guidelines are developed.

Directives

Directive on messages to all staff
Directive on the use of the Canada Border Services Agency brand: visual identity

9.3 Information about the communications function

General information about the communications function within the CBSA, including descriptions of communications services and activities, roles and responsibilities, and contact information can be found on Atlas.

³ Other legislation that the CBSA administers may have an impact on communications advice and activities. The major ones are listed in this policy. A complete list can be found on Atlas at http://atlas/about-sujet/legislation/index_e.asp.

10. Enquiries

Please direct any questions about this policy to:

Director General, Communications Directorate
Communications Directorate
9th Floor - 191 Laurier Avenue West
Ottawa, Ontario, K1A 0L8

Telephone: 613-948-9048

Facsimile: 613-952-1797

E-mail: Benoit.Chiquette@cbsa-asfc.gc.ca

Appendix A: Definitions

Advertising (*publicité*) – any message conveyed in Canada or abroad and paid for by the government for placement in media such as newspapers, television, radio, Internet, cinema, and out-of-home. (Definition from the Communications Policy of the Government of Canada)

Brand (*stratégie de marque*) – a combination of an organization's visual image, messages, actions and behaviours. A brand contributes to an organization's strategic objectives and how the organization's ultimate purpose is represented and communicated to all audiences.

Communications function (*fonction de communication*) – includes the management (planning, implementing and evaluating) of activities such as media relations, advertising, public opinion research, publishing, federal and corporate identity, and public environmental analysis. The function also involves planning, implementing, and evaluating communications activities and services for the Agency's branches and direct reports. The ultimate goal is to ensure that the public – internal or external to the government – receives information about the CBSA's mandate, programs and services.

Corporate identity (*image de marque*) – see **visual identity**.

Directives (*directives*) – directives define how the Communications Directorate plans on implementing its communications policy commitments by providing more in-depth policy instruction on the objectives, requirements and responsibilities for specific communications activities and services. At its most basic, directives outline objectives that need to be achieved to ensure the proper management of an activity or service. They outline the responsibilities and accountabilities of specific individuals or groups to fulfill stated objectives. A directive is mandatory.

Functional authority (*autorité fonctionnelle*) – defines the authority that a given management position has over a function within the CBSA no matter where that function is located in the organizational structure of the Agency. In the case of the communications function, the Director General, Communications Directorate has authority over the communications function within all branches, direct reports and regions within the Agency. This authority takes the form of resource allocation and budget oversight, defining strategic objectives and performance expectations, and priority setting.

Guidelines (*lignes directrices*) – a guideline provides advice on, or an explanation of, a particular service or activity. Guidelines can be considered an organization's attempt to capture the experience of its employees or publish best practices. A guideline is not mandatory.

Media relations (*relations avec les médias*) – describes a sub-function within the communications function that manages the CBSA's relationship with the media, including responding to requests from the media, proactively contacting the media to provide story ideas, advising senior management on appropriate media response, and developing and implementing media strategies to promote the CBSA as a whole to the media.

Performance measurement framework (*cadre de gestion du rendement*) – a document that outlines a system for ongoing performance measurement, including collecting and analyzing data and reporting on performance.

Policy instrument (*instrument de politique*) – any document that provides further direction on how to fulfill objectives and expected results outlined in a policy. In the case of the communications function, policy instruments are defined as directives, standard operating procedures and guidelines.

Public opinion research (*recherche sur l'opinion publique*) – contracted, planned gathering of opinions, attitudes, perceptions, judgments, feelings, ideas, reactions, or views. Public opinion research includes information collected from persons (including public service employees), businesses, institutions, or other entities, through quantitative or qualitative methods, irrespective of size or cost. (Definition from the Communications Policy of the Government of Canada)

Standard operating procedures (*procédures normales d'exploitation*) – standard operating procedures describe a series of actions and required tasks/steps to carry-out a communications activity. Examples may include: responding to media requests, posting an item on Atlas, or planning a communications event. A standard operating procedure is mandatory.

Strategic communications plan (*plan stratégique de communication*) – a high-level Agency-wide planning document that defines objectives and outcomes for the communications function on a 3-5 year cycle. The plan is developed in-line with organizational priorities and is used to develop divisional and regional annual communications plans.

Visual identity (*identité visuelle*) – also referred to as **corporate identity**, is the unified manner in which the CBSA visually identifies its presence and activities to the public. The systematic plan incorporates elements such as nomenclature, symbols, colour,

typography, and graphic standards in a uniform style and which embody the CBSA's values in order to project a singular and distinctive enterprise across all areas of activity.



Communications Policy of the Government of Canada

Effective date

This policy takes effect on August 1, 2006. This version of the policy incorporates updates effective April 1, 2012.

Policy Objective

The purpose of this policy is to ensure that communications across the Government of Canada are well co-ordinated, effectively managed and responsive to the diverse information needs of the public.

Policy Statement

It is the policy of the Government of Canada to:

1. **Provide the public with timely, accurate, clear, objective and complete information about its policies, programs, services and initiatives.** In the Canadian system of parliamentary democracy and responsible government, the government has a duty to explain its policies and decisions, and to inform the public of its priorities for the country. Information is necessary for Canadians – individually or through representative groups or Members of Parliament – to participate actively and meaningfully in the democratic process. It is required for access to government programs and services. The public has a right to such information.
2. **Communicate in English and in French.** The *Canadian Charter of Rights and Freedoms* establishes the equal status of English and French as the two official languages of Canada. It enshrines the right of the public to communicate with the Government of Canada in either language. Communications with the public and services to the public must be provided in both languages as required by the *Official Languages Act*. The *Act* affirms the government's commitment to enhance the vitality of the English and French linguistic minority communities in Canada – supporting and assisting their development – and to foster the full recognition and use of both English and French in Canadian society.
3. **Ensure that institutions of the Government of Canada are visible, accessible and accountable to the public they serve.** To be accessible and accountable, the government and its institutions must be visible and recognizable wherever they are present. Clear identification allows the public to see the government at work, to access its programs and services, and to assess its activities. Communicating through many channels – from service centres, the telephone and mail to print and broadcast media, the Internet and World Wide Web – the government must identify itself in a distinct, consistent way the public can recognize in all circumstances.
4. **Employ a variety of ways and means to communicate, and provide information in multiple formats to accommodate diverse needs.** Government information must be broadly accessible throughout society. The needs of all Canadians, whose perceptual or physical abilities and language skills are diverse, must be recognized and accommodated. Information must be accessible so citizens, as responsible members of a

democratic community, may be aware of, understand, respond to and influence the development and implementation of policies, programs, services and initiatives. Information must be available in multiple formats to ensure equal access. All means of communication – from traditional methods to new technologies – must be used to reach and communicate with Canadians wherever they may reside. Modern government requires the capacity to respond effectively over multiple channels in a 24-hour, global communications environment.

5. **Identify and address communication needs and issues routinely in the development, implementation and evaluation of policies, programs, services and initiatives.** Communication enables the exchange of information Canadians and their government rely upon for an effective partnership. Gathering and providing information of importance to the public, government and the democratic process requires professional tools and resources, and effective, accountable management. Internal and external communication requirements must be identified and met when planning, managing or reviewing policies, programs, services or initiatives. Responsible use of public funds to obtain maximum value for taxpayer investments is a fundamental requirement in all communication activities.
6. **Consult the public, listen to and take account of people's interests and concerns when establishing priorities, developing policies, and planning programs and services.** The government's obligation to reach out and communicate with citizens is concomitant with the right of citizens to address and be heard by their government. In a democracy, listening to the public, researching, evaluating and addressing the needs of citizens is critical to the work of government. The government must learn as much as possible about public needs and expectations to respond to them effectively. The dialogue between citizens and their government must be continuous, open, inclusive, relevant, clear, secure and reliable. Communication is a two-way process.
7. **Deliver prompt, courteous and responsive service that is sensitive to the needs and concerns of the public and respectful of individual rights.** Information services must be managed in a citizen-centred and client-focused manner that achieves results for Canadians. Timely and convenient access to government information and services must be available to the public. Access to information and privacy rights, as well as language rights, must be honoured at all times. Canadians value freedom, openness, security, caring and respect. It is important for their government to communicate in a spirit that reflects those values.
8. **Encourage public service managers and employees to communicate openly with the public about policies, programs, services and initiatives they are familiar with and for which they have responsibility.** Openness in government promotes accessibility and accountability. It enables informed public participation in the formulation of policy, ensures fairness in decision making, and enables the public to assess performance. An open and democratic government implies that all employees have a role in communicating with the public while respecting the constitution and laws of Canada. Public service managers and employees must respect privacy rights, matters before the courts, national security, Cabinet confidences and ministerial responsibility. They serve the public interest best by communicating openly and responsively about policies, programs, services and initiatives they help to administer, while treating sensitive information with the discretion it requires.
9. **Safeguard Canadians' trust and confidence in the integrity and impartiality of the Public Service of Canada.** Canadians value an independent, professional Public Service that treats individuals with respect, fairness and integrity. The value and reputation of public institutions must be honoured. Public service managers and employees are expected to provide information services in a non-partisan fashion consistent with the principles of parliamentary democracy and ministerial responsibility.
10. **Ensure all institutions of the Government of Canada work collaboratively to achieve coherent and effective communications with the public.** As a core activity

and shared responsibility touching all aspects of policy and program administration, the communications function involves employees throughout the government working collaboratively. Co-ordination within, between and among institutions is imperative to ensure coherent and consistent communications government-wide. Delivering information services in the best interests of Canadians and their government, meeting internal and external communication needs efficiently and effectively, is a co-operative endeavour.

Application and Authority

This policy is issued under the authority of the *Financial Administration Act* (FAA), Section 7, and applies to all institutions of the Government of Canada identified in Schedules I, I.1 and II of the Act, unless excluded by specific acts, regulations, or Orders in Council. All other public institutions subject to the FAA, particularly Crown corporations identified in Schedule III (Parts 1 and 2), are encouraged to become familiar with this policy and to apply its principles to their own communications management.

Requirements of this policy that involve the monitoring of departmental compliance by central and common service agencies; the consultation, collaboration or coordination with ministers and their offices, central and common service agencies, and other institutions; the integration of Government of Canada themes and messages; and the accountability to the Cabinet, ministers, the Clerk of the Privy Council, and the Secretary of the Treasury Board do not apply to the following institutions:

- Office of the Auditor General of Canada;
- Office of the Chief Electoral Officer;
- Office of the Commissioner of Lobbying of Canada;
- Office of the Commissioner of Official Languages;
- Offices of the Information and Privacy Commissioners of Canada; and
- Office of the Public Sector Integrity Commissioner of Canada.

Requirement 8, Public Opinion Research and Requirement 23, Advertising and all procedures do not apply to the institutions listed in the above paragraph. The deputy heads of these institutions are solely responsible for monitoring and ensuring compliance with this policy within their institution, and for responding to cases of non-compliance in accordance with any Treasury Board instrument providing principles and guidance on the management of compliance.

Policy Requirements

1. Informing and Serving Canadians

Institutions of the Government of Canada must provide the public with open access to information about policies, programs, services and initiatives. Information for public use must be disseminated or readily available in all regions of Canada using all forms of media practical. The communication needs of Canadians travelling or residing abroad must be taken into account as well so they, too, have access to information on policies, programs, services and initiatives.

To assure quality service that meets the information needs of all Canadians, institutions must ensure that:

- a. the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*, including all regulations and policies flowing from it, are respected at all times;
- b. trained and knowledgeable staff provide information services to the public;
- c. service is timely, courteous, fair, efficient and offered with all due regard for the privacy, safety, convenience, comfort and needs of the public;
- d. a variety of new and traditional methods of communication are used to accommodate the needs of a diverse public;
- e. published information is available on request in multiple formats to accommodate persons with disabilities;
- f. information in all formats is well identified as being from the Government of Canada according to the requirements of the *Federal Identity Program Policy*;
- g. information requests or inquiries from the public are responded to promptly without undue recourse to the *Access to Information Act*;
- h. prompt and clear explanations are provided when information requested by the public is unavailable;
- i. information is available on the standard of service an institution provides to the public, including timelines for responding to inquiries, mail and complaints;
- j. opportunities are available for the public to provide feedback on major policies, programs, services and initiatives, and that such feedback is carefully considered in reviews or evaluations of same to help make improvements; and
- k. up-to-date information about an institution's mandate, structure, programs and services is provided to Service Canada, which makes it available to the public through its service delivery network.

2. Information Free of Charge

Institutions must provide information free of charge when the information is in their control and it:

- a. is needed by individuals to make use of a service or program for which they are eligible;
- b. explains the rights, entitlements and obligations of individuals;
- c. consists of personal information requested by the individual whom it concerns;
- d. informs the public about dangers or risks to health, safety or the environment;
- e. is required for public understanding of a major new priority, law, policy, program or service; or
- f. is requested under the *Access to Information Act* and fees are waived at the discretion of the head of the institution.

3. Plain Language

An institution's duty to inform the public includes the obligation to communicate effectively. Information about policies, programs, services and initiatives must be clear, relevant, objective, easy to understand and useful.

To ensure clarity and consistency of information, plain language and proper grammar must be used in all communication with the public. This principle also applies to internal communications, as well as to information prepared for Parliament or any other official body, whether delivered in writing or in speech.

4. Official Languages

In all communications, institutions must respect the equality of status of the two official languages as established by the Canadian Charter of Rights and Freedoms and given effect through the Official Languages Act and the Official Languages (Communications with and Services to the Public) Regulations. Institutions must adhere to all legal requirements and regulations derived from these statutory provisions.

Institutions must identify and respect all official language requirements that apply when engaging in any of the communication activities stipulated in this policy. Institutions must abide by the Treasury Board's Official Languages Policy Framework, which sets out various requirements with respect to communications. They must also abide by the requirements of the Federal Identity Program Policy concerning the visual presentation of the official languages in communications or information materials.

5. Corporate Identity

Clear and consistent corporate identity is required to assist the public in recognizing, accessing and assessing the policies, programs, services and initiatives of the Government of Canada.

To maintain a recognizable and unified corporate identity throughout the government, institutions must ensure that their buildings, facilities, programs, services and activities are clearly identified in accordance with the Federal Identity Program (FIP) Policy. Institutions must manage communication design and presentation along common lines and in a co-ordinated manner consistent with FIP.

In identifying contributions or activities, institutions must give prominence to the official symbols of the Government of Canada. Institutions must display the Canada Wordmark, which is the global identifier of the Government of Canada, in all information and communication materials, regardless of medium, for internal or external use.

Institutions must also adhere to the Treasury Board's Standard on Web Accessibility and Standard on Web Usability, which apply to the design and presentation of on-line communications.

6. Reflecting Diversity

Institutions must ensure their publications and other communication materials depict the diverse nature of Canadian society in a fair, representative and inclusive manner. The requirements of the Canadian Multiculturalism Act must be respected at all times.

Institutions must be sensitive to differences among and within the various regions of Canada. They must ensure balance in their communication plans and activities so that the needs and interests of local and regional populations are reflected and addressed. (For further policy direction, see Requirement 15, Regional Operations.)

7. Environment Analysis

To evaluate and address public needs and expectations effectively – to anticipate issues that may arise and to formulate appropriate response strategies – institutions must routinely monitor and analyse the public environment as it relates to their policies, programs, services and initiatives. Institutions use a variety of tools to assess the environment in which they operate, including citizen feedback, inquiry analysis, media monitoring and opinion research.

As an element of effective environment analysis, institutions must identify and track current and emerging public issues and trends reported by the media. Public Works and Government Services Canada (PWGSC) offers institutions an electronic media monitoring service. Institutions that choose to use this service must register with PWGSC for right of access.

8. Public Opinion Research

Public opinion research helps the government to better understand Canadian society and to identify citizen needs and expectations. It is used to assess the public's response to proposals or to possible changes or initiatives; to assess the effectiveness of policies, programs and services; to measure progress in service improvement; to evaluate the effectiveness of communication activities such as advertising; and to plan and evaluate marketing initiatives, among other applications.

Public opinion research is the planned gathering, by or for a government institution of opinions, attitudes, perceptions, judgements, feelings, ideas, reactions, or views that are intended to be used for any government purpose, whether that information is collected from persons (including employees of government institutions), businesses, institutions or other entities, through quantitative or qualitative methods, irrespective of size or cost.

The information gathering may be associated with a broad range of activities, for example: policy research; market research; communications research, communication strategies and advertising research; program evaluation; quality of service/customer satisfaction studies; omnibus surveys, with the placement of one or more questions; syndicated studies; or product development.

The following research and/or methods for obtaining opinions and/or advice are not considered to be opinion research: literature reviews or reviews of secondary sources, including reviews of already conducted public opinion research; secondary analysis of previously collected public opinion research data; and verification of performance of services or delivery of goods in contract situations.

In keeping with the principles of a non-partisan public service, institutions may not issue contracts or expend public funds for research on electoral voting intentions, or political party preferences or party standings with the electorate.

Institutions must adhere to the requirements of the Treasury Board's Contracting Policy and Common Services Policy when contracting public opinion research to quantify, qualify or evaluate the views, attitudes or perceptions of a given population. The bidding process for government public opinion research must be open, fair and transparent. Institutions must ensure the quality and value of research they commission or produce.

To ensure coherent, cost-effective management of public opinion research throughout the government, institutions must:

- a. co-ordinate the planning and implementation of public opinion research with PWGSC in accordance with the Procedures for Planning and Contracting Public Opinion Research;
- b. contract public opinion research services through PWGSC, which, as the Government of Canada's technical and co-ordinating authority for public opinion research, reviews and advises on the research plans and strategies of institutions, and assigns project registration numbers authorizing contracts to proceed;
- c. ensure that the principles of fair information practices embodied in Sections 4 to 8 of the *Privacy Act*, as well as in the *Personal Information Protection and Electronic Documents Act*, are respected in any public opinion research;
- d. provide, within six months of the completion of public opinion research fieldwork, copies of final reports to the Library of Parliament and to Library and Archives Canada. Reports

must be in writing and provided in both electronic and paper copy format. Library and Archives Canada, in turn, posts executive summaries, including links to contract information, in both official languages on its Web site;

- e. share research results with PWGSC as well as other Government of Canada departments and agencies that have an interest in the findings; and
- f. release final research results to the public promptly on request.

9. Consultation and Citizen Engagement

Communication requirements must be taken into account in the planning, management and evaluation of consultation and citizen engagement activities. Open and responsive communications are critical to the success of public consultations, as is factual information presented to participants in plain language.

Communications staff provide advice and support to managers who plan, implement or evaluate an institution's consultation and citizen engagement processes. Managers responsible for consulting the public work collaboratively with communications staff, who prepare and help to implement communication plans and strategies.

Institutions must inform Canadians about opportunities to participate in public consultation and citizen engagement initiatives. This may be done through Web sites, letters of invitation, notices to the media, paid advertising and other vehicles normally used by institutions to communicate with the public, including publishing notices in the *Canada Gazette*. (For further policy direction, see Requirement 27, Publishing.)

Institutions must ensure that information about their external public consultations and citizen engagement activities is posted on their Web sites and information, including Web links, is submitted to the *Consulting with Canadians Web site* maintained by Service Canada. The *Consulting With Canadians Web site* serves as the government's gateway for public access to information on consultations planned, underway or recently completed by institutions.

Institutions must ensure as well that communication or information materials prepared for consultative purposes are well identified as being from the Government of Canada, according to the requirements of the Federal Identity Program Policy.

10. Risk Communication

Institutions must anticipate and assess potential risks to public health and safety, to the environment, and to policy and program administration. Usually understood to embody an element of possible danger, hazard or threat, risk in the broadest sense is associated with a willingness to take a chance on uncertainty in order to achieve some potential gain.

Plans and strategies for communicating risk to the public must be developed as needed. To communicate about risk effectively, institutions must demonstrate interest and concern for all opinions and positions, understand different perspectives, and respect their underlying premises. Effective risk management requires open and transparent communication among differing or even opposing interests.

Institutions must:

- a. foster open dialogue with the public on issues involving risk and build a climate of trust, credibility and understanding by being forthcoming about facts, evidence and information concerning risk assessments and decisions taken;
- b. facilitate the interactive exchange of information on risk and risk-related factors among interested parties inside and outside of their institution;

- c. respond to public perceptions and provide factual information to address misconceptions or misunderstandings about risk;
- d. integrate environment analysis and communication planning and strategy into risk assessment and decision-making processes; and
- e. follow Treasury Board policy direction on risk management in the delivery of programs and services, and consult Treasury Board guidance on the subject, which includes the *Framework for the Management of Risk*.

11. Crisis and Emergency Communication

While the terms "crisis" and "emergency" are not synonymous, effective communication is an integral part of both crisis and emergency management.

A "crisis" is a situation that somehow challenges the public's sense of appropriateness, tradition, values, safety, security or the integrity of the government. A crisis need not pose a serious threat to human life or property. Effective communication management is imperative to help maintain or restore the public's confidence in the government during times of crisis.

An "emergency" is an abnormal situation that requires prompt action, beyond normal procedures, in order to limit damage to persons, property or the environment. Some emergencies may also be, or become, crises; if, for example, it is perceived that the government has no control over a situation. Effective communication management is imperative before, during and after an emergency to help prevent injury or loss of life, to help limit damage to assets and property, to help maintain public services, to assist in the process of recovery, and to help maintain or restore public confidence in the government.

Under the *Emergency Preparedness Act*, institutions are required to prepare plans for dealing with emergencies. The *Policy on Government Security*, issued by the Treasury Board, also requires institutions to develop plans and procedures for handling emergencies.

Institutions must recognize that extraordinary and rapid efforts may be required in times of crisis or emergency. They must be prepared to adjust priorities and resources accordingly. The necessary plans, partnerships, tools and methods must be in place to allow government officials to communicate effectively and efficiently in both official languages during an emergency or a crisis.

Several government agencies at the national, provincial or local level may be involved in responding to an emergency or crisis. Co-operation with others, such as industry or community leaders and non-governmental organizations, may also be required.

Agreement among governments and their institutions regarding lead responsibility for communications during a crisis or an emergency is essential for the timely provision of accurate, relevant and consistent information. It is necessary to facilitate the delivery of services, to eliminate the potential for contradiction or confusion, and to demonstrate government leadership.

Lead institutions must undertake contingency planning and develop standard operating procedures. They must seek agreement with regional and local authorities on the co-ordination of government assistance and the designation of a single focus of responsibility for all communications with the public.

Lead responsibility must be identified as part of the planning process. Where it is unclear which government authority may have the lead in particular circumstances, institutions must seek guidance from the Privy Council Office.

12. Management and Co-ordination

Institutions must integrate communications into corporate management processes and procedures. Communications are a shared responsibility that must be co-ordinated with other areas of management.

Clear working links must be maintained at all times between communications and other core functions: policy and program management, service delivery, human resources management, information management, and the management of information technology.

Institutions must:

- a. develop, implement, manage and evaluate policies, programs, services and initiatives with the ongoing advice, support and involvement of specialists in government communications;
- b. ensure that the communications function – as outlined in Appendix B – has the resources needed to fulfil the requirements of this policy, and that resources are prudently managed;
- c. ensure an appropriate distribution of resources between headquarters and regions in all communications planning, management and delivery;
- d. ensure that staff at all levels carry out their unique role in, and shared responsibilities for, delivering and managing government communications;
- e. examine ways to increase efficiency in responding to communication issues, and adjust and simplify approval processes as necessary;
- f. ensure the coherence and consistency of information and messages across all channels of communication, from in-person service, telephone and mail, to facsimile, Internet and electronic transmission;
- g. collaborate with other institutions of the Government of Canada in communication activities that promote common or government-wide messages and themes; and
- h. seek the advice of the Privy Council Office on issues and themes which may have horizontal or government-wide implications that require co-ordination.

13. Planning and Evaluation

Institutions must integrate communication planning into their annual business planning process and evaluate communications work as an integral part of business operations. Business plans must take account of an institution's communication requirements.

Every institution must prepare a corporate communication plan that:

- integrates governmental, ministerial and institutional priorities;
- identifies target audiences inside and outside of the institution (citizens, stakeholder groups, etc.);
- takes account of the views and concerns of audiences inside and outside of the institution (i.e. the internal and external environments);
- delineates strategies, tools, messages and responsibilities for communicating with target audiences; and
- sets out operational needs and resource allocations.

The corporate communication plan must be periodically reviewed, evaluated and updated in conjunction with the business planning and budgeting cycle.

Institutions must:

- a. ensure that communication planning forms an integral part of program and policy initiatives and that communication requirements are fully accounted for within budgets and financial plans;
- b. ensure that the public environment – particularly the views and needs of citizens – is assessed at all stages of an initiative and reflected in communication plans;
- c. ensure communication plans and strategies for policies, programs, services and initiatives are developed collaboratively with input from responsible managers in both headquarters and regional offices;
- d. reflect Government of Canada themes and messages in communication plans and strategies;
- e. work collaboratively with other Government of Canada institutions to develop joint communication plans and strategies in areas of mutual interest;
- f. share communication plans and evaluation findings with other Government of Canada institutions;
- g. provide communication plans to the Treasury Board of Canada Secretariat on request for information, monitoring or review;
- h. track the performance of communication products and measure results achieved against objectives set in communication and business plans;
- i. evaluate the effectiveness, including cost-effectiveness, of communication programs and campaigns developed in support of policy or program initiatives, and make improvements or adjustments as needed to ensure the efficacy of plans, strategies and activities;
- j. evaluate periodically (at least every three years) the degree to which their management practises comply with the requirements of this policy;
- k. include, when feasible, an assessment of the degree of compliance with this policy in their internal audits, evaluations and reviews of programs and services;
- l. comply with the requirements of the Treasury Board's *Policy on Internal Audit, Policy on Evaluation* and *Policy Framework for Financial Management* when carrying out reviews, evaluations or audits related to communications; and
- m. provide audit and evaluation reports to the Treasury Board of Canada Secretariat when completed.

14. Memoranda to Cabinet and Treasury Board Submissions

A Memorandum to Cabinet must include a communication plan and identify resources dedicated to achieving communication goals and objectives, as prescribed by the Cabinet Paper System.

A communication plan with budget information is also required in Treasury Board submissions that concern significant investments of public funds, a major new policy, program, service or initiative, or matters in which the public has demonstrated or could express sensitivity and concern. A communication plan is not required in a submission that is the subject of a preceding Memorandum to Cabinet. A communication plan is also not required in a submission for the release of advertising funds from the Treasury Board acting on the basis of policy direction from the Cabinet or a designated Cabinet committee.

To ensure appropriate measures and adequate resources are recommended to meet planned communication objectives, the head of communications reviews the memoranda to Cabinet and Treasury Board submissions an institution prepares.

15. Regional Operations

Regional offices responsible for delivering programs and services in the different regions of Canada must be involved in an institution's communication planning, development, implementation and evaluation.

Co-ordination between headquarters and regional operations in communication matters is essential. Regional communications staff must be included from the outset in planning and developing strategies to achieve an institution's communication objectives at the local or regional level.

Heads of communications and regional communications managers must confer regularly to ensure an institution's communication objectives are met in all regions of the country.

When issuing communications or public information with a regional focus or orientation, or when participating in a local event, institutions must ensure that appropriate senior staff from the regional operation(s) concerned are involved in communications planning, strategy and implementation. Similarly, regionally driven communications activities must involve headquarter operations.

Institutions must ensure that regional operations have the resources needed to carry out the requirements of this policy and to effectively manage the communications function. Institutions must ensure that all regional communications conform to the Federal Identity Program Policy.

Regional events and activities frequently involve multiple institutions in communication planning and management. Regional communications involving multiple institutions are co-ordinated by the Privy Council Office (PCO). PCO works closely with the regional councils of senior federal officials, and with communications managers in the regional offices of institutions, to improve and facilitate government communications in the provinces and territories.

16. Internal Communication

Communication among managers and employees must be open and collaborative to achieve government goals and institutional missions, and to ensure quality information services for the public.

Internal communication must be two-way, a dialogue. Listening to employee ideas, concerns and suggestions for achieving results and improving service, and acting upon them, is just as important as keeping employees informed about the goals and priorities of an institution, or about developments, changes or new initiatives affecting their work. Taking account of the views and concerns of employee unions, representatives and associations can also lead to more effective organizational management.

Engaging employees in a conversation for action allows institutions to tap into a vast pool of intelligence and expertise. Properly engaged in the life of an organization, employees can be valuable allies in external communications – helping to inform the public, professional colleagues and prospective employees about their organization.

Internal communications is an integral part of an institution's corporate communications strategy and must be addressed in the corporate communication plan. (For further policy direction, see Requirement 13, Planning and Evaluating.)

Effective internal communication is a shared management responsibility. The deputy head champions an institution's commitment to open and collaborative internal communications with the support of the entire management team. Collaboration, particularly between human

resources management and the communications function, is essential to ensure internal communication requirements are met.

Managers and supervisors must communicate with employees openly, frequently, and before or at the same time as information is communicated to the public. Training in communications must be available to them to help ensure they are effective communicators.

To foster employee knowledge, awareness and understanding, internal communication includes a mix of published materials (in multiple formats), oral presentations, staff meetings and learning events. Representation on newsletter editorial boards, internal communication advisory committees and evaluation task forces provide additional avenues to engage managers and employees in a conversation for action.

Internal communication activities and processes must be reviewed from time to time to evaluate results, to identify areas for improvement, and to make adjustments as needed.

All internal communications must be managed in accordance with the requirements of the Official Languages Act (particularly Part V concerning the language of work). Institutions must comply with the Treasury Board's Official Languages Policy Framework, particularly its requirements for Language of Work and Communications between Regions.

Internal communication materials must be identified in accordance with the Federal Identity Program Policy.

17. Technological Innovation and New Media

Institutions must maintain a capacity for innovation and stay current with developments in communications practice and technology. As they adopt new means of communication, institutions must continue to reach, in a timely manner, citizens whose access to technology may be limited or who prefer to receive government information through more traditional means.

To ensure new technology advances an institution's ability to connect with Canadians in efficient and practical ways, all investment plans and decisions must be developed collaboratively by managers in information technology, communications and other key functions, such as program and service delivery, and human resources.

Investments in new communications technology must serve to:

- a. enhance public access to information, programs and services;
- b. achieve efficiencies in the preparation, accessibility and dissemination of information, while preserving its availability to current and future generations;
- c. foster interactive communications with Canadians and facilitate public consultation in the development and delivery of policies, programs, services and initiatives; or
- d. improve service performance and integrate service delivery.

18. Internet and Electronic Communication

The Internet, World Wide Web and other means of electronic communication are powerful enablers for building and sustaining effective communication within institutions and with their clients across Canada and around the world.

An important tool for providing information and services to the public, the Internet facilitates interactive, two-way communication and feedback. It provides opportunities to reach and connect with Canadians wherever they reside, and to deliver personalized services.

Institutions must maintain an active presence on the Internet to enable 24-hour electronic access to public programs, services and information. E-mail and Web sites must be used to enable direct communications between Canadians and government institutions, and among public service managers and employees.

Institutions must advance Government of Canada on-line initiatives aimed at expanding the reach and quality of internal and external communications, improving service delivery, connecting and interacting with citizens, enhancing public access and fostering public dialogue.

Institutions must ensure that Internet communications conform to government policies and standards. Government of Canada themes and messages must be accurately reflected in electronic communications with the public and among employees.

To ensure congruence with other communication activities, an institution's Web sites, sub-sites and portals must be reviewed regularly by the head of communications, or his or her designate, who oversees and advises on Web content and design.

Web site managers, at headquarters and in regional offices, must consult with communications staff on the editorial and visual content of Web pages, including design and presentation, to ensure publishing standards and other communication requirements are met.

Collaboration is also required between communications and information technology specialists to ensure effective planning and management of electronic information services. Managers and employees responsible for the operational and technical aspects of an institution's Web-based systems work in consultation with communications staff who provide strategic advice on Web content and the use of technology for communication purposes. (Also see Web site references in Requirement 23, Advertising, Requirement 24, Partnering and Collaborative Arrangements, Requirement 26, Marketing and Requirement 27, Publishing.)

Institutions must:

- a. manage their Web sites and portals in accordance with the Treasury Board's *Standard on Web Accessibility* and *Standard on Web Usability*;
- b. identify on-line information and services, including e-mail messages, in accordance with the *Federal Identity Program Policy*;
- c. ensure electronic communications conform to the requirements of the *Official Languages Act* and to the Treasury Board's *Official Languages Policy Framework*, including the *Policy on the Use of Electronic Networks*;
- d. be connected to the Government of Canada's Internet and intranet portal sites, the *Canada Site* and *Publiservice*, managed by Service Canada;
- e. ensure that Internet-published information on policies, programs, services and initiatives is regularly updated, accurate, easy to understand, and accessible in multiple formats for persons with disabilities;
- f. ensure that printed material for public dissemination is published concurrently on the Internet;
- g. incorporate mechanisms into on-line services for receiving and acknowledging public feedback;
- h. ensure that information about their external public consultations and citizen engagement activities is posted on their Web sites and information, including Web links, is submitted to the *Consulting with Canadians Web site* maintained by Service Canada (For further policy direction, see Requirement 9, Consultation and Citizen Engagement.);
- i. respect privacy rights and copyright ownership in all on-line publishing and communication – in compliance with the *Privacy Act*, the *Personal Information Protection and Electronic Documents Act* and the *Copyright Act*;

- j. ensure that information published on Web sites, prior to posting any changes or updates, is recorded and archived to assure long-term retention and the preservation of institutional memory – with timely and consistent processes for doing so established in consultation with the managers of an institution's information holdings; and
- k. abide by the Treasury Board's *Policy on the Use of Electronic Networks*, *Policy on Management of Information Technology*, *Policy on Information Management*, *Policy on Government Security* and *Policy on Privacy Protection*.

19. Media Relations

Journalists and other media representatives play an important role in the democratic process – providing the public with news and information about government, and reporting on the public's views and opinions of government. Institutions must cultivate proactive relations with the media to promote public awareness and understanding of government policies, programs, services and initiatives.

Institutions must operate and respond effectively in a 24-hour media environment. They must be able, on short notice, to reach and inform the media on issues of importance to decision-makers and the public. Institutions engage the media using a variety of communication tools, including news conferences, background or technical briefings, news releases, and audio-video presentations.

Institutions must facilitate information or interview requests from the media, and manage plans and strategies for communicating with the media. Institutions must consult their minister's office when planning media campaigns or strategies that could involve ministerial participation, or when preparing a response to a media enquiry that could have implications for the minister.

Institutions must respect the authority and responsibility of Parliament, whose members are entitled to learn about planned legislative initiatives before information about them is released to the media.

Institutions must ensure the quality and consistency of information services provided to the media in both official languages. Media enquiries, whether by phone, email, letter or in person, must be addressed promptly to accommodate publication deadlines.

Institutions must ensure processes and procedures are in place to assist managers and employees in responding to media calls. Communication specialists responsible for media relations ensure that media requests, particularly for interviews or technical information on specialized subjects, are directed to knowledgeable managers or staff designated to speak as official representatives of their institution. (For further policy requirement, see Requirement 20, Spokespersons.)

20. Spokespersons

Ministers are the principal spokespersons of the Government of Canada. They are supported in this role by appointed aides, including executive assistants, communication directors and press secretaries in ministers' offices, and by the senior management teams of government institutions, which include deputy heads, heads of communications and other officials.

Ministers present and explain government policies, priorities and decisions to the public. Institutions, leaving political matters to the exclusive domain of ministers and their offices, focus their communication activities on issues and matters pertaining to the policies, programs, services and initiatives they administer.

An institution's senior management must designate managers and knowledgeable staff in head offices and in the regions to speak in an official capacity on issues or subjects for which they have responsibility and expertise.

Officials designated to speak on an institution's behalf, including technical or subject-matter experts, must receive instruction, particularly in media relations, to carry out their responsibilities effectively and to ensure the requirements of their institution and this policy are met. (For further policy direction, see Requirement 19, Media Relations.)

Spokespersons, particularly senior managers, are often called upon to represent institutions before parliamentary committees and boards of inquiry. To ensure effective communication that respects official protocol, spokespersons must be familiar with Privy Council Office guidelines on appearing before Parliament and other official bodies.

Spokespersons at all times must respect privacy rights, security needs, matters before the courts, government policy, Cabinet confidences and ministerial responsibility. When speaking as an institution's official representative, they must identify themselves by name and position, speak on the record for public attribution, and confine their remarks to matters of fact concerning the policies, programs, services or initiatives of their institution.

21. Public Events and Announcements

Institutions, both at headquarters and in their regional offices, must identify opportunities to inform the public about significant initiatives or contributions of the Government of Canada. Public events and announcements, including news conferences, must be arranged from time to time for communication purposes.

Institutions determine whether they will participate in a public event or issue an announcement. They must contact their minister's office to determine if the minister or other parliamentarian(s) chosen by the minister will represent the government.

Institutions must plan and co-ordinate events with ministerial staff when a minister will attend, or with a parliamentarian's staff when a Member of Parliament or Senator will attend. When multiple institutions are involved in a public event or announcement, they must co-ordinate their participation with the Privy Council Office.

Institutions must ensure that the Government of Canada is appropriately identified and represented at events and announcements, including those involving other participants, such as other levels of government, non-governmental organizations, industry or business. Institutions must identify all materials, displays or presentations prepared for public events or announcements in accordance with the Federal Identity Program Policy. Official language requirements must also be addressed.

Institutions must not participate in, or lend support to, partisan events organized for political party purposes.

22. Fairs and Exhibitions

Rescinded

23. Advertising

Institutions may place advertisements or purchase advertising space or time in any medium to inform Canadians about their rights or responsibilities, about government policies, programs, services or initiatives, or about dangers or risks to public health, safety or the environment.

Government of Canada advertising is defined as any message, conveyed in Canada or abroad, and paid for by the government for placement in media such as newspapers, television, radio, Internet, cinema and out-of-home.

Institutions must determine their obligations under Sections 11 and 30 of the *Official Languages Act* to ensure compliance in all advertising. Moreover, institutions must ensure that positive measures are taken for the implementation of the Government of Canada's commitment, stated in Part VII of the *Act*, to enhance the vitality of official language minority communities. Advertising plans and campaigns must address the needs, concerns and language preferences of such communities. Media buys must include the purchase of advertising space and time in organs serving a community's official language minority, be it English or French.

The placement or purchase of advertising may also be directed at audiences outside of Canada to promote Canadian interests. To ensure compatibility with government communications and marketing abroad, institutions must consult with Foreign Affairs and International Trade Canada when planning to advertise in foreign markets.

Advertising placed in Canadian foreign language media is normally translated into the appropriate foreign language. If a translation is not available, the ad must appear in the two official languages of Canada each displayed with equal prominence in the same advertising space.

Institutions must not publish in their communication materials, services or vehicles, regardless of medium, advertisements from a private-sector or non-government source. Institutions must not sell advertising space or time, either on their Web sites or in any of their publications, to the private sector or to any source outside of government.

Institutions must avoid the appearance or public perception of endorsing or providing a marketing subsidy or an unfair competitive advantage to any person, organization or entity outside of government. Institutions must not advertise or publicly endorse the products or services they purchase or obtain from the private sector under contract. (For further policy direction, see Requirements 24, Partnering and Collaborative Arrangements and Requirement 25, Sponsorships.)

Institutions must not use public funds to purchase advertising in support of a political party.

Institutions must suspend their advertising during general elections of the Government of Canada. Advertising is only permitted when: an institution is required by statute or regulation to issue a public notice for legal purposes; an institution must inform the public of a danger to health, safety or the environment; or an institution must post an employment or staffing notice. Otherwise, advertising plans and activities must be held in abeyance effective the day that the Governor in Council issues a writ for a general federal election, and must not resume until the day the newly elected government is sworn into office.

To ensure the integrity and efficacy of government advertising, institutions must:

- a. co-ordinate advertising planning with PCO, and implementation with PWGSC, in accordance with the Procedures for Planning, Contracting and Evaluating Advertising;
- b. ensure advertising campaigns and products are aligned with government priorities, the Government Advertising Plan, and government themes and messages, with advice from PCO and the Government Advertising Committee;
- c. contract advertising services through PWGSC, which issues project registration numbers authorizing contracts to be put in place and ADV numbers authorizing the government's Agency of Record to purchase media space for advertising;

- d. adhere strictly to the requirements of the Treasury Board's *Contracting Policy* and *Common Services Policy* in all advertising procurement. The bidding process for government advertising must be open, fair and transparent;
- e. ensure that advertising design and presentation conform to the requirements of the *Federal Identity Program Policy*;
- f. ensure that national advertising campaigns are adapted to regional audiences;
- g. pre-test all major advertising campaigns to help ensure they meet stated objectives and forward the results to PCO and PWGSC;
- h. evaluate all major advertising campaigns to assess their effectiveness in achieving stated objectives and forward the results to PCO and PWGSC;
- i. confer with PWGSC and PCO when planning to use public opinion research to pre-test or evaluate major advertising campaigns; and
- j. document advertising activities using the Advertising Management Information System (AdMIS) maintained by PWGSC.

24. Partnering and Collaborative Arrangements

Communication requirements must be taken into account when planning, negotiating or implementing a partnering or collaborative arrangement.

Joint activities or initiatives involving another government, a company, an organization, a group or an individual must be communicated in a manner that is fair and equitable to all parties. The parties involved in a collaborative arrangement have shared or compatible objectives, contribute resources (financial or in-kind), share in the benefits, and agree to a fair allocation of risk-taking.

Agreements governing collaborative arrangements establish the communication roles and responsibilities of the parties involved. Official languages, corporate identity, visibility, publishing, marketing and promotional activities are among the communication requirements delineated in partnering agreements.

Managers responsible for negotiating, implementing or administering collaborative arrangements must consult with their institution's head of communications, or his or her designate, for communication advice and support. Such consultation must take place prior to establishing a collaborative arrangement, as well as when one is under way, to ensure compatibility with the communication goals of the government and the institution.

When informing the public or publishing information about partnering activities, institutions must ensure that the contributions of all participants are fairly acknowledged and attributed. Corporate names and logos, without promotional tag lines, are appropriate identifiers for use in acknowledging the contributions of participants.

Institutions must use the Canada Wordmark when identifying their own participation in a collaborative arrangement, as required under the *Federal Identity Program Policy*, to enable public recognition of the contributions of the Government of Canada.

Institutions must ensure that the parties involved also acknowledge the Government of Canada's contribution in their own communications with the public.

In its communications with the public, whether on its Web sites or in any of its publications, an institution must not advertise the commercial products or services of private-sector participants. Information issued by an institution about a collaborative arrangement and its participants must be objective and factual, not promotional.

For the purpose of this policy, to ensure fair acknowledgement of contributors, the simple display of a corporate name or logo in communication materials intended for public dissemination in any medium does not constitute advertising.

A collaborative arrangement may include advertising or promotional efforts involving the media as part of a communication strategy. However, such efforts must not be the focus of partnering activities, but simply an aide to informing the public about them. (For further policy direction, see Requirement 23, Advertising.)

In all partnering and collaborative arrangements, institutions must:

- a. analyse the public environment and take account of the views, concerns and language preferences of citizens and stakeholders before entering into an agreement;
- b. be mindful of public perceptions, avoid conflicts of interest, uphold public trust and confidence in the impartiality and integrity of the Public Service, and honour the value and reputation of public institutions;
- c. determine whether a proposed partnering or collaborative arrangement constitutes an alternative service delivery initiative under the Treasury Board's criteria for such and, if so, adhere to the *Policy on Reporting of Federal Institutions and Corporate Interests to Treasury Board Secretariat*;
- d. ensure the deputy head is regularly informed of communication plans and activities related to partnering and collaborative arrangements;
- e. integrate information about partnering and collaborative arrangements into the institution's business and communication planning processes; and
- f. communicate the results of collaborative arrangements through normal audit, evaluation and performance reporting processes.

25. Sponsorships

Institutions both issue and receive sponsorships – arrangements in which one party provides another with financial resources or in-kind assistance to support a project or activity of mutual interest and benefit. Like all collaborative arrangements, sponsorships must be communicated in a manner that is fair and equitable to each party.

Institutions must acknowledge their sponsors when communicating with the public about a sponsored activity. Similarly, institutions must ensure sponsorship recipients – individuals, groups, companies or other governments – acknowledge the Government of Canada's contribution(s) to their activities.

Managers responsible for arranging or administering sponsorships must consult with their head of communications, or his or her designate, before issuing or accepting a sponsorship to ensure its compatibility with the government and institution's communication goals. The institution's deputy head must be regularly informed as well of communication plans and activities related to sponsorship arrangements. (For further policy direction, see Requirement 24, Partnering and Collaborative Arrangements which also applies to sponsorships.)

Institutions must not accept a sponsorship from the private sector in exchange for advertising the goods or services of the sponsor.

A sponsored project or activity may include advertising or promotional efforts involving the media as part of a communication strategy. However, such efforts must not be the focus of a sponsorship, but simply an aide to informing the public about it. (For further policy direction, see Requirement 23, Advertising and Requirement 24, Partnering and Collaborative Arrangements.)

26. Marketing

Marketing assists in promoting an institution's policies, programs, services and initiatives to the public. Institutions must integrate marketing with the communications function. This ensures that promotional activities, whether in support of specific market needs or broader policy objectives, advance the communication goals of the government and the institution.

To ensure congruence with other communication activities, the head of communications, or his or her designate, must review marketing plans and strategies before they are implemented.

Like other communication activities, the design and implementation of marketing initiatives, projects or campaigns must conform to the requirements of the Federal Identity Program Policy. Similarly, marketing efforts conducted through an institution's Web site must conform to the requirements of the Treasury Board's Standard on Web Accessibility and Standard on Web Usability.

In all marketing activities, institutions must comply with the Official Languages Act and the Treasury Board's Official Languages Policy Framework.

For marketing initiatives that involve advertising in any medium, the advertising must be coordinated with PWGSC and PCO in accordance with the Procedures on Planning, Contracting and Evaluating Advertising. (For further policy direction see Requirement 23, Advertising, Requirement 24, Partnering and Collaborative Arrangements and Requirement 25, Sponsorships.)

27. Publishing

Institutions must facilitate public access to their publications – all information materials, regardless of publishing medium, produced for public dissemination or for limited circulation outside of government.

To ensure public access to government publications, and that statutory requirements for government publishing are met, institutions must:

- a. maintain an index – accessible to the public – that lists all of an institution's published works, free and priced publications as well as co-publications;
- b. forward the index of published and co-published works with regular updates to PWGSC for entry into the Government of Canada's central publishing database;
- c. provide copies of published works to the Depository Services Program, managed by PWGSC;
- d. comply with the statutory requirements to publish legal and regulatory notices in the *Canada Gazette*, managed by PWGSC;
- e. notify PWGSC of publications they plan to produce for sale;
- f. ensure that publications for sale are not comprised primarily of information that otherwise must be provided free of charge as described in Requirement 2;
- g. make publications available in multiple formats on request, as stipulated in Requirement 1(e);
- h. ensure that published material in all formats meets official language requirements and the design standards and requirements of the *Federal Identity Program Policy*;
- i. follow the bibliographic standards set by Library and Archives Canada and ensure that publications in all formats are assigned standard bibliographic reference numbers (International Standard Book Numbers or International Standard Serial Numbers);

- j. provide two copies of all publications, in all formats available and in both English and French, to the Depository Services Program or directly to Library and Archives Canada in accordance with the *Library and Archives of Canada Act*;
- k. ensure that publications available on their Web sites meet the Treasury Board's *Standard on Web Accessibility* and *Standard on Web Usability*;
- l. comply with the requirements of the Treasury Board's *Policy on Information Management* and *Common Services Policy*; and
- m. comply with the requirements of the Treasury Board's *Contracting Policy* when contracting for printing, editorial, design or distribution services.

28. Copyright and Licensing

Institutions must comply with the *Copyright Act* and ensure that the ownership rights associated with works subject to copyright are fully respected in all media applications.

Institutions must manage the administration and licensing of Crown copyright in co-ordination with Public Works and Government Services Canada. Institutions must comply with the Treasury Board's *Common Services Policy* and *Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts*. Institutions also must comply with the requirements of the *Federal Identity Program Policy* with respect to Government of Canada symbols and identifiers protected under the *Trade-marks Act*.

29. Film, Video and Multimedia Productions

The production, distribution and evaluation of motion picture films, videotapes, television programs, interactive videodiscs, CD ROMs, audiovisual and multimedia productions must be contracted through Public Works and Government Services Canada. PWGSC ensures the integrity of the contracting process between institutions and private- or public-sector producers. It oversees contracting, quality control and storage services, while institutions handle all other aspects of project management.

All film, video, audiovisual and multimedia productions commissioned by institutions must comply with the requirements of the *Federal Identity Program Policy* and the Treasury Board's *Common Services* and *Contracting* policies. In accordance with the *Library and Archives of Canada Act*, copies of all finished productions in film, video, compact disk, audiovisual and multimedia formats must be deposited with Library and Archives Canada. Official language requirements also must be met.

30. Cataloguing and Securing Information

Communication materials and published information in all formats must be well-catalogued and securely maintained to ensure current as well as long-term accessibility.

Institutions must:

- a. ensure that communication records, documents and materials in any format are maintained in compliance with the *Library and Archives of Canada Act*;
- b. catalogue and describe their information holdings for use in Info Source as required by the *Access to Information Act* and the *Privacy Act*;
- c. maintain an internal library where copies of all publications an institution issues, in all formats, are deposited to ensure long-term retention and access (in co-ordination with Library and Archives Canada);

- d. maintain a current, comprehensive and well-structured identification or classification system or systems that provide effective means for organizing and locating information, as required by the Treasury Board's *Policy on Information Management*; and
- e. ensure that all requirements of the Treasury Board's *Policy on Information Management*, *Policy on Access to Information*, *Policy on Government Security* and *Policy on Privacy Protection* are met.

31. Training and Professional Development

Institutions must provide their managers and employees at all levels with orientation in the *Communications Policy of the Government of Canada*. Incoming employees must be informed about the policy, and encouraged to familiarize themselves with it, upon appointment.

Institutions must:

- a. foster professional development among communications staff to ensure they are well versed in the current tools and techniques of communications practice;
- b. plan for their communication training requirements, allocate adequate resources for staff training and development, and evaluate the effectiveness of training programs; and
- c. facilitate communications training for employees and managers, particularly those responsible for program and service delivery who work directly with the public, to assist them in developing the skills needed to be effective communicators for their institution.

Accountability

1. Ministers

Under the Canadian parliamentary system, ministers are accountable to the Prime Minister and to Parliament for presenting and explaining government policies, priorities and decisions to the public.

Ministers, both individually and collectively as members of Cabinet, are the principal spokespersons for the Government of Canada and its institutions. It is their role to provide leadership in establishing the priorities and overall themes of government communications.

Ministers:

- determine, together with their respective deputy heads, their communication priorities, objectives and requirements;
- approve the corporate communication plans of the institutions they head;
- define the responsibilities of ministerial staff with respect to communications; and
- establish, together with their respective deputy heads, effective liaison between ministerial staff and institutional heads of communications to ensure that the communication of policy and operational initiatives is co-ordinated, with particular attention to media relations and participation in public events and announcements.

2. Treasury Board of Canada and Secretariat

The Treasury Board of Canada is responsible for approving and promulgating general administrative policy for the Government of Canada, in accordance with the *Financial Administration Act*. Institutions subject to the FAA are responsible, and their deputy heads are accountable, for meeting the requirements of Treasury Board policies.

The Treasury Board of Canada Secretariat advises and supports the Board and its President in the development, management and evaluation of administrative policy. The Secretariat has key responsibilities for the *Communications Policy of the Government of Canada*, which include:

- developing, evaluating and reviewing government-wide communications policy;
- advising institutions on policy interpretation and application;
- monitoring policy implementation and compliance;
- advising on the allocation and management of funds for government advertising, which the Privy Council Office co-ordinates in conjunction with the Government Advertising Committee and the Cabinet, and assessing, advising on and processing Treasury Board submissions from institutions to release funding for approved advertising initiatives;
- assessing performance and results, and ensuring effective resource and expenditure management related to the communications function;
- directing, co-ordinating and monitoring implementation of the Federal Identity Program Policy; and
- designating, in collaboration with the Privy Council Office, lead institutions to develop communications policy requirements, guidelines and procedures for the approval of the Treasury Board as required.

3. Cabinet

The Cabinet, supported by designated Cabinet committees, sets and monitors the government's strategic communications direction and provides day-to-day co-ordination for the implementation of the government's agenda. It ensures that emerging issues are managed effectively throughout the government and acts as the gatekeeper for policy and legislative proposals. It sets policy direction and funding allocations required for Treasury Board to release funds for advertising contracts based on the Government Advertising Plan. The Privy Council Office advises and supports the Cabinet, helping to set and manage its agenda, and develops the Government Advertising Plan.

4. Privy Council Office

The Privy Council Office (PCO) has a central role in the co-ordination and management of government communications, as determined by the Prime Minister and Cabinet. It is responsible for:

- advising Cabinet and its committees, as well as PCO senior management and institutions across the government, on communication issues, themes and strategies;
- supporting and monitoring the implementation of Cabinet decisions across government, particularly with respect to communications;
- collecting and analyzing information on the public environment in order to advise the Prime Minister, ministers and institutions on public policy issues;
- providing institutions with advice and support in communications planning and management;
- advising institutions on communication issues related to the planning, management and evaluation of policies, programs, services and initiatives;
- co-ordinating and supporting the planning of horizontal or government-wide communications, by designating lead institutions and assigning special responsibilities;

- chairing the Government Advertising Committee, developing and monitoring the Government Advertising Plan, and recommending funding allocations under the Advertising Plan to Cabinet or its designated committee;
- improving government communications in all regions of Canada, co-ordinating regional communication activities involving multiple institutions, working with regional communications managers and the regional councils of senior Government of Canada officials in the provinces and territories;
- facilitating the exchange of information among institutions; and
- providing, in collaboration with the Treasury Board of Canada Secretariat, government-wide leadership for the continuous development of the communications community within the Public Service of Canada.

5. Deputy Heads

For the purpose of this policy, deputy heads include all deputy ministers appointed to the government departments listed in Schedule I, and the appointed heads of all institutions listed in Schedules I.1 and II, of the *Financial Administration Act*.

Deputy heads lead, and are responsible for, the overall management of communications and its integration with other key functions, particularly policy and program management. They champion an institution's internal communications.

Deputy heads are accountable to:

- their ministers, for ensuring the government's communication priorities and requirements are met;
- the Clerk of the Privy Council, for ensuring that their institutions' communications fully reflect government-wide policies, themes and priorities, and that the communications function is fully integrated into the planning, management and evaluation of policies, programs, services and initiatives; and
- the Secretary of the Treasury Board, for implementing this policy within their institutions and for carrying out related directives, instructions or administrative procedures that the Secretary may issue from time to time.

Deputy heads must ensure that any instructions issued by the Clerk of the Privy Council, and all relevant Cabinet decisions, concerning communication priorities of the Government of Canada are fully implemented.

Deputy heads must ensure that the requirements of the *Communications Policy of the Government of Canada* are fulfilled in all operations of the institutions they lead, both within Canada and abroad. This includes ensuring that institutions manage both internal and external communications according to the values and principles expressed in the policy.

An institution's deputy head shall designate a senior official, referred to herein as the head of communications, to support the deputy head in the implementation and application of this policy.

6. Heads of Communications and Communications Staff

The head of communications is the senior official designated to support the deputy head in co-ordinating and directing their institution's implementation of this policy.

Heads of communications are members of senior management and report directly to deputy heads. They are accountable to deputy heads for managing the communications function, as

described in Appendix B of this policy, both at the headquarters and in the regional offices of institutions. They are also accountable for ensuring that the corporate identity requirements of the Government of Canada, as determined by the Federal Identity Program Policy, are adhered to in all applications.

Heads of communications manage corporate identity, advertising, publishing, marketing, environment analysis, public opinion research, media relations, event participation, and other communication activities. They oversee an institution's Web content to ensure it meets communication standards. They also manage horizontal communication issues and priorities that involve a number of government institutions as identified and co-ordinated by the Privy Council Office.

Heads of communications and communications staff are actively involved in the planning, management and evaluation of policies, programs, services and initiatives – providing communications advice and support in all phases of operation.

The head of communications must ensure that the activities of an institution's communications staff, at headquarters and in regional offices, conform to the requirements of this policy regardless of reporting relationships or placement within organizational structures.

Communications staff carry out all duties associated with the communications function. Advocating on behalf of those who will or should receive information, communications staff ensure the clarity and utility of information for the end user. They work collaboratively with other key personnel (as noted in Subsection 7 below) providing communications advice and support.

7. Policy Advisers, Program Managers and Functional Specialists

The communications function is a shared responsibility that requires the support, co-operation and interaction of various personnel throughout an institution. Policy advisers, program managers and other functional specialists – analysts, researchers, human resource officers, access to information and privacy co-ordinators, marketing specialists, information technologists, Web masters, graphic artists, librarians, receptionists and call-centre staff – must carry out the requirements of this policy in all aspects of their work. Their supervisors must ensure that the head of communications, or his or her designate, is consulted on all activities and initiatives involving communication with the public or which have implications for an institution's internal communications.

Such personnel must participate actively in the planning, co-ordination and implementation of an institution's communications, including the use of new technologies. Their co-operation is required to ensure sufficient resources for communications are allocated within operational budgets. Active working links and ongoing liaison with communications staff are imperative to ensure that an institution's communication needs, both domestic and international, are fully accounted for and addressed in all program and policy activities.

Collaboration among policy advisers, program managers, analysts, researchers, marketing specialists and communications staff ensures that public needs and concerns are routinely identified and addressed in the planning, management and evaluation of policies, programs, services and initiatives. It also ensures that the communication goals and priorities of the government are consistently and coherently reflected in programs and services.

Collaboration between specialists in human resources and communications staff ensure that an institution's internal communication requirements are met. Collaboration among information technologists, Web masters, call-centre operators, graphic artists and communications staff

ensures that proposed activities or methods of communication are technically feasible and practical.

Librarians assist institutions in providing public access to information and in organizing and retaining published materials in all formats according to internationally accepted standards. Librarians play an active role in every phase of the information life cycle, from assistance to authors and editors, to publication management and dissemination, ensuring current and long-term access to government information, and preserving the nation's published heritage.

Co-operation with access to information and privacy (ATIP) co-ordinators or advisers is also required. Such personnel ensure that the appropriate institutional officials are informed in a timely manner of information that is being disclosed to the public. Communications staff assist ATIP co-ordinators as needed to ensure that requests under the Access to Information Act are promptly and fully addressed in accordance with the legislation.

8. Public Works and Government Services Canada

Public Works and Government Services Canada (PWGSC) operates as a common service agency for the Government of Canada. It provides institutions with various mandatory and optional information services to ensure that government communications are well-integrated and cost effective pursuant to Treasury Board policies.

PWGSC co-ordinates contracting services with institutions to ensure consistent and efficient delivery of government communications. It ensures the integrity of the government contracting process for advertising and public opinion research, for publishing and electronic media monitoring, for film, video, audiovisual and multimedia productions, and for fairs and exhibitions.

As well as managing the contracting process for professional advertising services, PWGSC manages the contract with the government's Agency of Record. Institutions procure media space for advertising through the Agency of Record. PWGSC also provides advisory services to institutions and maintains the Advertising Management Information System (AdMIS), which documents the advertising activities of institutions throughout the government and forms the basis for annual reporting on such activities.

In its role as the government's technical and co-ordinating authority for public opinion research, PWGSC advises institutions on their research plans and strategies, and maintains standing offers and other tools to facilitate the purchase of research services. PWGSC publishes an annual report on the government's research activities and manages a Web-based database that is used to co-ordinate public opinion research activities throughout the Government of Canada.

Representing the Queen's Printer for Canada, PWGSC is responsible for the administration of Crown copyright and the management of priced publications throughout the Government of Canada.

In accordance with the Statutory Instruments Act and its Regulations, the Queen's Printer is also responsible for publishing the Canada Gazette, the official newspaper of the Government of Canada. PWGSC provides a common service co-ordination role to government institutions required by statute to publish in Part I of the Gazette.

PWGSC also maintains the Government of Canada's central publishing database and acts as a central warehouse and distribution channel for the priced publications of government institutions. It manages the Depository Services Program as well.

PWGSC also assists institutions and the government in monitoring the public environment.

To ensure sound financial management and the consistent application of Treasury Board policies and directives, PWGSC provides to the Treasury Board of Canada Secretariat, as required, information and advice on the allocation of expenditures in contracts for communication services.

9. Service Canada

The Government of Canada's one-stop service delivery network brings the range of federal information, programs and services together to meet the needs of Canadians. Service Canada offers citizens quick access to all Government of Canada programs and services through 1 800 O-Canada, on the Web through the common point of online access to federal institutions, the Canada Site portal, and through its points of service. It also manages *Publiservice*, the government's intranet site for public service managers and employees.

10. Library and Archives Canada

Library and Archives Canada is the permanent repository of the Government of Canada and its institutions. Preserving published and unpublished information for current and future generations, the agency works to ensure that government information is available and accessible to decision makers and the public both in the immediate and long-term. It works with institutions to preserve the nation's published heritage.

Under the Library and Archives of Canada Act, institutions are required to deposit all newly published material in various formats with Library and Archives Canada. The agency manages the redistribution of library materials institutions have declared surplus. It is responsible for co-ordinating government library services, and for providing them with leadership and direction.

Library and Archives Canada also has audit and evaluation responsibilities with respect to the materials institutions publish. It monitors whether published material in all formats is deposited with an institution's internal library as well as with Library and Archives Canada. It also monitors the management of an institution's published material, and reports and advises on its long-term access and preservation in all formats.

Library and Archives Canada has a lead role in facilitating the management of information in government institutions. It performs this role in close collaboration with the Treasury Board of Canada Secretariat and Public Works and Government Services Canada.

Monitoring

The Treasury Board of Canada Secretariat will monitor and evaluate implementation of this policy throughout the Government of Canada. Evaluations will be conducted by the Secretariat to assess the effectiveness of institutions in meeting the policy requirements and to assess the effectiveness of the policy in helping the government to meet its objectives.

Evaluation findings will contribute to a formal review of this policy to take place within five years of its effective date. Evaluations of communications management by institutions will also inform the policy review and provide input to the development of best practices in this area. In monitoring and assessing the effectiveness of communications management practices, the Secretariat and institutions will conform to the Treasury Board's Policy Framework for Financial Management, Policy on Evaluation and Policy on Internal Audit.

The Secretariat will monitor compliance with all aspects of this policy in a variety of ways that can include media and parliamentary scanning, tracking information requests and correspondence, Web site navigation, and examining communication plans, strategies, reviews, audits, evaluations and related documents (as shown in Table 1 below). Investigative

reports and special studies by the Office of the Auditor General of Canada, the Office of the Commissioner of Official Languages, the Office of the Privacy Commissioner and the Office of the Information Commissioner may also be reviewed.

The Privy Council Office will monitor the implementation of Cabinet direction on communications by reviewing communication plans and through ongoing liaison with institutions.

Table 1

Policy Requirement	Monitored Plans and Activities
8(a) - (f)	Public opinion research plans, contracts and reports.
10	Plans and strategies for communicating risk.
11	Plans and strategies for crisis and emergency communications.
13	Corporate communication plan, periodic reviews and updates.
13(c) - (m)	Communication plans and strategies for policies, programs, services and initiatives. Audit and evaluation plans and reports.
14	Communication plans in Memoranda to Cabinet and Treasury Board submissions.
19	Media plans and strategies.
21	Plans for public events and announcements.
23(a) - (j)	Advertising plans, contracts, pre-testing and evaluations.
24	Plans and agreements for partnering and collaborative arrangements.
24(f)	Audit and evaluation reports for collaborative arrangements.
25	Sponsorship plans and agreements, audit and evaluation reports.
26	Marketing plans and strategies.
27(e)	Publishing plans for priced publications.
31(b)	Communication training plans for managers and employees.

Procedures

As stated in the Policy Requirements, institutions must co-ordinate certain communication activities with Public Works and Government Services Canada (PWGSC), Service Canada and/or with the Privy Council Office (PCO). To ensure efficient co-ordination, institutions must follow all administrative procedures established for these activities, listed in Table 2 below.

The Secretary of the Treasury Board issues mandatory administrative procedures supporting the policy requirements. Such procedures are developed with the support and advice of PCO, Service Canada and PWGSC, which co-ordinate their administration with institutions.

Copies of all relevant procedures institutions must follow under this policy are available through the responsible centre(s) shown below.

Table 2

Policy Requirement	Co-ordinated Activity	Responsible Centre
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1(k)	Updating public access information for 1 800 O-Canada and the Canada Site.	Service Canada
7	Accessing the electronic media monitoring service.	PWGSC
8(a), (b) and 23(i)	Planning and contracting public opinion research.	PWGSC
9 and 18(h)	Posting information about consultations on the <i>Consulting With Canadians Web site</i> .	Service Canada
18(d)	Connecting to the Government of Canada Internet (<i>Canada Site</i>) and intranet (<i>Publiservice</i>) portals.	Service Canada
23(a) and (b)	Advertising planning.	PCO
23(a)	Advertising implementation.	PWGSC, Service Canada
23(c) and (d)	Contracting advertising services, and purchasing media space through the Agency of Record.	PWGSC
23(g) - (i)	Pre-testing and evaluating advertising.	PWGSC
23(j)	Documenting advertising activities using the Advertising Management Information System (AdMIS).	PWGSC
27(b) and (c)	Registering publications with the Depository Services Program and central publishing database.	PWGSC
27(d)	Publishing notices in the <i>Canada Gazette</i> .	PWGSC
27(e) and (f)	Planning and producing publications for sale.	PWGSC
28	Administration and licensing of Crown copyright.	PWGSC
29	Contracting film, video, audiovisual and multimedia productions.	PWGSC

Guidelines

The Secretary of the Treasury Board issues guidelines from time to time to assist institutions in applying this policy and in adopting best practices in various areas of government communications. Institutions must familiarize themselves with these guidelines, which are published as annexes to this policy.

References

1. Legislation

- Access to Information Act
- Canadian Charter of Rights and Freedoms
- Canadian Multiculturalism Act
- Copyright Act
- Emergency Preparedness Act
- Financial Administration Act
- Library and Archives of Canada Act

- Official Languages Act
- Official Languages (Communications with and Services to the Public) Regulations
- Personal Information Protection and Electronic Documents Act
- Privacy Act
- Publication of Statutes Act
- Statutory Instruments Act
- Statutory Instruments Regulations
- Trade-marks Act

2. Related frameworks, policies and standards

- Contracting Policy
- Common Services Policy
- Federal Identity Program Policy
- Framework for the Management of Risk
- Official Languages Policy Framework
- Policy Framework for Financial Management
- Policy on Access to Information
- Policy on Evaluation
- Policy on Government Security
- Policy on Information Management
- Policy on Internal Audit
- Policy on Management of Information Technology
- Policy on Privacy Protection
- Policy on Reporting of Federal Institutions and Corporate Interests to Treasury Board Secretariat
- Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts
- Policy on the Use of Electronic Networks
- Standard on Web Accessibility
- Standard on Web Usability

Inquiries

For questions on this policy instrument, please contact TBS Public Enquiries.

Appendix A: Definitions

Guidelines (*Lignes directrices*)

information, usually in the form of best practices, intended to help institutions carry out government policy efficiently and effectively. Guidelines are not mandatory with respect to the policy they support.

Institutions (*Institutions*)

includes, for the purpose of this policy, all departments, agencies, boards, councils, commissions and other bodies identified in Schedules I, I.1 and II of the *Financial Administration Act*.

Policy (*Politique*)

provides authoritative direction to government institutions on a given subject and determines the discretion for making decisions regarding that subject.

Policy requirements (*Exigences de la politique*)

the specific actions that institutions must take to achieve the Policy Objective and to promote the fundamental principles outlined in the Policy Statement.

Procedures (*Procédures*)

support a policy by describing routine operations that institutions must carry out.

Appendix B: The Communications Function

Communications are central to the work and management of the Government of Canada. As a function of good management, open and proactive communication ensures that the public receives government information, and that the views and concerns of the public are taken into account in the planning, management and evaluation of policies, programs, services and initiatives.

Government communications represent a vital public service that involves both providing information and listening to the public. To develop policies, programs and services that meet the needs of a diverse public, the government must understand the environment within which it operates and respond to the concerns of the public in relevant and useful ways. This includes communicating in the official language of a person's choice, and producing information in multiple formats to accommodate diverse needs.

Communications entail more than simply providing or receiving information. The manner in which information is exchanged is also important. The quality and timeliness of the transaction has an impact on the value of the information and the credibility of its source.

Communications within the Government of Canada is a shared responsibility involving officials and employees at all levels. Effective policy and program development and administration requires co-operation and co-ordination throughout the government: among ministers, senior officials, policy advisers, analysts, program managers, communications staff, specialists in human resources, information technologists, Web masters, graphic artists, researchers, marketing specialists, access to information and privacy co-ordinators, librarians, receptionists, call-centre staff and others.

Co-operation and co-ordination between institutions are also necessary to better serve and inform the public. It ensures that government themes and priorities are clearly and consistently reflected in the information and messages communicated to Canadians at home and abroad.

In budgeting for and delivering communication services, it is essential that all elements of the communications function be properly resourced. Sufficient resources must be allocated to all local, regional, national and international operations to ensure the requirements of the *Communications Policy of the Government of Canada* are fulfilled.

The communications function, under the stewardship of heads of communications in all institutions of the Government of Canada, includes the following:

Effective and Accountable Management

- providing leadership, support and advice to ensure that communications are integrated in all phases of policy and program planning, development, implementation, marketing and management;

- applying the principles and practices of good management to the co-ordination of research, analysis, advice and planning, and to the organization and implementation of communication programs and activities;
- preparing and implementing communication plans and strategies – including analyses of the internal and external environments – in support of policies, programs, services and initiatives;
- assessing performance and evaluating results, learning, and adjusting processes and activities to enhance effectiveness;
- providing effective resource and expenditure management;
- ensuring appropriate accountability and reporting mechanisms to Parliament and central agencies for the administration of all communication activities;
- ensuring the inclusion of communication plans, and the identification of dedicated resources, in memoranda to Cabinet and in Treasury Board submissions;
- co-ordinating activities with ministers' offices to advance the communication goals and priorities of the government;
- providing communications support and advice to ministers and senior officials on (non-partisan) government matters, including the preparation of speeches, news releases, briefing notes, presentations, memoranda and correspondence;
- collaborating with other Government of Canada institutions to promote common communication objectives;
- providing advice and support in the establishment and management of collaborative arrangements and sponsorships;
- integrating corporate communication planning with annual business planning and budgeting cycles;
- ensuring coherence and consistency of communications across all channels – telephone, in-person, mail, publications, Web sites, and so forth;
- integrating all communication activities, including Internet applications, marketing, advertising, public opinion research and media relations to promote consistent and well co-ordinated communications with the public;
- advising on and assisting in the development of internal communication strategies and activities that recognize and support the role all employees have in communicating with the public;
- supporting an open, co-operative and consultative culture throughout the workplace, which includes being open to the views and concerns of employee unions, representatives and associations regarding workplace issues;
- advising on information management to ensure effective use of information technologies and electronic communications;
- advising on and assisting in risk communication;
- advising on and assisting in crisis and emergency communications.

Values and Ethics

- informing the public about policies, programs, services and initiatives in an accountable, non-partisan fashion consistent with the principles of Canadian parliamentary democracy and ministerial responsibility;
- communicating in a manner that affirms Canadian values of freedom, openness, security, caring and respect;
- ensuring that public trust and confidence in the impartiality and integrity of the Public Service of Canada are upheld;

- honouring the value and reputation of the government and public institutions in all communication activities;
- working collaboratively with institutions to serve the public interest;
- providing useful, timely, accurate, clear, objective and complete information to the public in both official languages;
- respecting privacy rights, security needs and matters before the courts;
- avoiding conflicts of interest and the appearance or public perception of endorsing, or providing a marketing subsidy or an unfair competitive advantage to, any person, organization or entity outside of government.

Listening and Evaluating

- researching and analyzing public issues and the public environment to help identify and assess the wants, needs and views of Canadians with respect to existing or proposed policies, programs, services and initiatives;
- maintaining open communications with the public and developing proactive strategies for assessing and addressing public concerns;
- learning about the views, priorities, needs and expectations of Canadians through various means, including enquiry analysis, citizen feedback, media coverage and opinion research;
- advising on and assisting in public consultations and citizen engagement;
- planning, conducting or contracting and analyzing public opinion research;
- providing, co-ordinating or contracting media monitoring services;
- evaluating communication programs and activities against planned objectives and professional standards, and making adjustments or improvements as needed;
- monitoring and evaluating the degree to which management practises comply with the requirements of this policy.

Meeting Diverse Needs

- preparing, producing and disseminating information using all forms of media and graphic arts, including electronic publishing;
- advocating on behalf of those who will or should receive information to ensure its clarity and utility for the end user;
- communicating in English and French – complying with official language requirements in all communications;
- communicating with the public and providing information services through the Internet and other electronic media while ensuring more traditional or alternative forms of communication are available to meet the needs of all Canadians;
- recognizing the special needs of many Canadians, including literacy levels and perceptual or physical challenges, and designing and delivering communication tools to respond to those needs;
- recognizing the diverse nature of Canadian society and ensuring that communications are fair, balanced and representative.

Outreach

- applying marketing, citizen engagement and consultation techniques to foster citizen feedback or to enhance public access to, awareness and use of government policies, programs, services and initiatives;
- planning, co-ordinating and implementing regional, national and international activities that integrate major objectives of the government, ministers and institutions;
- planning, co-ordinating, implementing and evaluating advertising, publishing and public awareness programs and campaigns;
- building and maintaining communication partnerships with various sectors of society to help meet the diverse information needs of Canadians and to achieve government objectives;
- building and maintaining effective relations with journalists and other communicators;
- planning, co-ordinating and promoting the government's participation in public events, including fairs and exhibitions.

Corporate Identity and Visibility

- enabling the public to recognize clearly the activities of the Government of Canada and its institutions by means of consistent identification;
- applying the requirements of the *Federal Identity Program Policy* in all presentations, and promoting a common look in all communication activities, to ensure accountability and public recognition of the Government of Canada;
- ensuring appropriate use of the official symbols and signatures of the Government of Canada in all media applications, as prescribed by the *Federal Identity Program Policy*;
- ensuring effective management of an institution's identity consistent with government-wide priorities;
- promoting sound management practices related to information design and identification;
- ensuring appropriate identification of government participation in public events, including fairs and exhibitions;
- ensuring appropriate identification of government participation in sponsorships and collaborative arrangements;
- reflecting key government themes and messages in information and communication materials so that overarching goals and the government's priorities for the country are consistently identified and communicated to the public and among employees.

Annex: Guidelines

Best practice guidelines in various areas of communications management will be developed over time and published as annexes to the *Communications Policy of the Government of Canada*.

The Treasury Board of Canada Secretariat will notify institutions as each set of guidelines becomes available.

Listed below are 16 subject areas for which guidelines are planned:

- Advertising
- Crisis and Emergency Communication
- Environment Analysis

- Evaluation
- Events and Announcements
- Internal Communication
- Internet and Electronic Communication
- Marketing
- Media Relations
- Multiple Formats
- Partnering, Collaborative Arrangements and Sponsorships
- Plain Language
- Planning, Management and Co-ordination
- Publishing
- Regional Communications
- Risk Communication

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Schedule 2H

Delegated authority for operational matters Labour Relations and Compensation

Section	Topic and Description	CBSA - 1	CBSA - 2	CBSA - 3	CBSA - 4	CBSA - 5	References and Remarks
1 a)	Hours of work, including flexible work arrangements						
1 a) 01	Establishes service hours to provide service to the public.	X	X	X			Maximum hours of work Policy. Note: In consultation with the Branch VP.
1 a) 02	Approves a day work schedule, including flexible hours of work and variable work week.	X	X	X	X	X	PSTCER, the relevant collective agreement and Policy on maximum hours of work.
1 a) 03	Approves shift schedules.	X	X	X	X	X	PSTCER and the relevant collective agreement. Note: If shifts are to be changed other than already existing standard shifts established by the collective agreement, consultation with Regional Labour Relations and unions is required.
1 a) 04	Approves variable shift schedule arrangements.	X	X	X			PSTCER and the relevant collective agreement. Note: Consultation with Labour Relations and union is required

							prior to approval, at both local and Corporate levels.
1 a) 05	Requires an employee to work overtime or on a designated holiday.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 a) 06	Approves requests for part-time employment.	X	X	X	X	X	
1 a) 07	Approves request for telework arrangements.	X	X	X	X		Telework Policy.
1 b)	Pay						
1 b) 01	Authorizes rate of pay set above the minimum on appointment from outside the Public Service.	X	X	X			Pay Administration Manual.
1 b) 02	Authorizes payment for acting appointments:						PSTCER and the relevant collective agreement.
	→ up to 4 months	X	X	X	X	X	
	→ 4 months to 12 months	X	X	X	X		PSER and Staffing Policy.
	→ over 12 months.	X	X				
1 b) 03	Delays statutory pay increase due to unsatisfactory performance.	X	X				PSTCER Note: Consultation with Regional Labour Relations is required prior to approval.
1 b) 04 i	Authorizes recovery of overpayment at a lower recovery rate than 10% over an extended period of time.	President					Pay Administration Manual.
1 b) 04 ii	Authorizes recovery of overpayment at a recovery rate between 10% and 99.9% over an extended period of time.	X	X				Pay Administration Manual.
1 b) 05	Authorizes payment of call-back pay, standby, overtime/travel time.	X	X	X	X	X*	The relevant collective agreement.
1 (b) 06	Approves payment of shift premium.	X	X	X	X	X*	The relevant collective agreement.
1 b)	Approves payment of late	X	X	X	X	X*	The relevant collective

07	hour premium.						agreement.
1 b) 08	Recommends to Treasury Board Secretariat a waiver of penalty for superannuation purposes in cases of involuntary termination of employment.	X	X				Superannuation Manual.
1 b) 09	Approves payment of commuting assistance allowance.	X	X	X	X	X*	The relevant collective agreement and NJC Commuting Assistance Directive.
1 b) 10	Authorizes payment of bilingualism bonus.	X	X	X	X		NJC Bilingualism Bonus Directive.
1 b) 11	Authorizes reimbursement of membership or registration fees.	X	X	X	X		The relevant collective agreement and TBS Membership Fees Bulletin, dated July 10, 2002.
1 b) 12	Authorizes payment of non-accountable vacation travel assistance advance to employees in an isolated post.	X	X	X	X		NJC Isolated Posts and Government Housing Directive.
1 c)	Leave						
	Vacation leave and compensatory leave						
1 c) 01	Schedules and approves vacation leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 02	Displaces a period of vacation leave due to bereavement, illness in the family or sick leave on production of a medical certificate.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 03	Approves the liquidation of unused vacation leave.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 c) 04	Approves carry-over of vacation leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 05	Cancels or alters approved vacation leave or recalls from vacation leave.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 (c) 06	Establishes (where not already defined in collective	X					PSTCER and the relevant collective

	agreements) the period for payment of unused compensatory leave.						agreement. Note: Consultation with Corporate Labour Relations.
1 c) 07	Approves compensatory leave in lieu of payment of overtime.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 c) 08	Grants travel status leave with pay (7.5 hrs of time off) to employees away from permanent resident for 40 nights in a fiscal year.	X	X	X	X	X	Relevant collective agreement.
Sick leave							
1 c) 09	Grants paid sick leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 (c) 10	Grants advancement of sick leave credits.	X	X	X	X		PSTCER and the relevant collective agreement. Note: Consultation with Regional Labour Relations is required.
1 c) 11	Approves sick leave without pay :						PSTCER and the relevant collective agreement and the Leave Without Pay Policy. Note: Consultation with Regional Labour Relations is required.
	→ up to 1 year	X	X	X	X	X	
	→ over 1 year but less than 2 years	X	X	X	X		
	→ over 2 years.	X	X				
1 c) 12	Approves injury on duty leave with pay :						PSTCER and the relevant collective agreement and the Injury-on-Duty Leave Policy. Note: Consultation with Regional Labour Relations is required.
	→ up to 130 days	X	X	X	X	X	
	→ over 130 days.	X	X	X	X		
1 c) 13	Grants up to 3.75 hrs of time-off with pay to pregnant employees to attend routine medical appointments.	X	X	X	X	X	

1 c).14	Approves sick leave with or without pay where a series of continuing appointments are necessary for the treatment of a particular condition relating to the pregnancy.	X	X	X	X	X	
Other types of leave (with or without pay)							
1 c) 15	Approves bereavement leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 16	Grants bereavement leave with pay for a period greater than and/or in a manner different than that provided for in the collective agreement.	President					PSTCER and the relevant collective agreement.
1 c) 17	Approves court leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 18	Approves examination leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 19	Approves leave with pay for family-related responsibilities.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 20	Approves maternity- related reassignment or leave without pay for reason of pregnancy or nursing.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 21	Approves parental leave without pay.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 22	Approves personnel selection leave with pay for a position in the PS.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 23	Approves leave with or without pay for reserve forces training.	X	X	X			Leave With Pay and Leave Without Pay Policies.
1 c) 24	Approves leave with pay to participate in international sporting events.	X	X	X			Leave With Pay Policy.
1 c) 25	Approves leave with or without pay for union business.	X	X	X	X ¹		Relevant collective agreement.

1 c) 26	Approves leave without pay for immediate care of a family member :						PSTCER and the relevant collective agreement.
	→ up to 1 year	X	X	X	X	X	
	→ for more than 1 year but not exceeding 5 years.	X	X	X	X		
1 c) 27	Approves leave without pay for personal needs:						PSTCER and the relevant collective agreement.
	→ up to 3 months.	X	X	X	X	X	
	→ for more than 3 months but not exceeding 1 year.	X	X	X	X		
1 c) 28	Approves leave without pay for relocation of spouse :						PSTCER and the relevant collective agreement.
	→ up to 1 year (when permanently relocated).	X	X	X	X		
	→ for more than 1 year but not exceeding 5 years (when not permanently relocated).	X	X	X	X		
1 c) 29	Approves time-off with pay to fulfill religious obligations.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 30i	Provides the employee who requests permission to seek nomination or to be a candidate for municipal, federal, provincial or territorial election with a completed "Deputy Heads Input Form" in order to complete the employees request to be submitted to the PSC.	President					PSEA and PSC Guidelines on Political Activities
1 c) 30ii	Endorses PSC decision in regards to cessation of employment or leave of absence without pay when permission granted by PSC to seek nomination or to be a candidate for municipal, federal, provincial or territorial election.	X	X				PSEA and Leave Without Pay Policy.
1 c) 31	Approves self-funded leave.	X	X	X	X		Self-funded leave

							Policy.
1 c) 32	Approves leave with income averaging.	X	X	X	X		Leave with Income Averaging Policy.
1 c) 33	Approves pre-retirement transition leave.	X	X	X	X		Pre-retirement Transition Leave Policy.
1 c) 34	Approves leave with pay when circumstances not directly attributable to employee prevent reporting for duty.	X	X	X	X	X	Relevant collective agreement.
1 c) 35	Approves leave with or without pay for purposes other than those specified in the collective agreement or PSTCER.	X	X	X	X		Relevant collective agreement. Note: Consultation with Regional Labour Relations is required.
1 c) 36	Approves off-duty status (lack of work).	X	X	X			Note: Consultation with Regional Labour Relations is required.
Education leave							
1 c) 37	Approves education leave without pay for a period up to one year and without allowance in lieu of salary which involves eligibility for :						Relevant collective agreement.
	→ educational fees totaling less than \$10,000.00	X	X	X			
	→ educational fees totaling more than \$10,000.00	X HQ	X Regions				
1 c) 38	Approves education leave without pay for a period up to one year and with allowance in lieu of salary which involves eligibility for :						Relevant collective agreement.
	→ educational fees totaling less than \$10,000.00	X	X				
	→ educational fees totaling more than \$10,000.00	X HQ	X Regions				
1 c) 39	Approves career development leave with pay.	X	X				Relevant collective agreement.
1 c) 40	Approves personal leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.

1 c) 41	Authorizes management leave.	X					
1 c) 42	Approves volunteer leave.	X	X	X	X	X	Relevant collective agreement.
1 d)	Union issues						
1 d) 01	Approves union notices and other materials for posting.	X	X	X	X ¹	X ¹	Relevant collective agreement. Note: Consultation with Regional Labour Relations is recommended.
1 d) 02	Authorizes union representative to access the employer's premises.	X	X	X	X	X	Relevant collective agreement.
1 d) 03	Grants permission to union representative to investigate employee complaints of urgent nature.	X	X	X	X	X	Relevant collective agreement.
1 d) 04	Authorizes union representative to meet with management for the purpose of dealing with grievances.	X	X	X	X	X	Relevant collective agreement.
1 d) 05	Authorizes union representative to attend meeting called by management.	X	X	X	X ¹	X ¹	Relevant collective agreement.

X¹ DeNotes that the individual is delegated only if he/she is excluded.

X* DeNotes that the individual is delegated with financial signing authority.

Date Modified: 2008-06-24

VIOLENCE PREVENTION PROGRAM

Policy on Violence Prevention in the Work Place

This policy comes into effect on April 1, 2011.

- General Policy Statement
- Definitions
- Authorities
- Purpose and Scope
- Background
- Specific Policy Statements
- Roles and Responsibilities
- References
- Appendices

General Policy Statement

1. It is the policy of the Canada Border Services Agency (CBSA) to provide a safe, healthy and violence-free work place by dedicating sufficient attention, resources and time to address factors that contribute to work place violence. These factors include, but are not limited to, bullying, teasing, and abusive and other aggressive behaviour. It is the policy of the CBSA to prevent and protect against violence in the work place. Further, the CBSA will inform employees about factors contributing to work place violence and will provide employees with clear procedures to follow should they encounter violence in the work place. Finally, the CBSA commits to assisting employees who have been exposed to work place violence.

Definitions

2. **Competent Person** – means a person who is impartial and is seen by the parties to be impartial; has knowledge, training, and experience in issues relating to work place violence; and has knowledge of relevant occupational health and safety legislation. For the purpose of this policy, the competent person is defined as the Regional Security Manager.
3. **Employee** – means a person employed by an employer [Subsection 122.(1) of the *Canada Labour Code*, Part II]. For the purposes of this policy, an employee includes all CBSA employees (indeterminate and determinate), casuals, students, Border Services Officer recruits, persons hired through temporary agencies, and consultants and contractors for whom an employer/employee relationship can be established.
4. **Employee Assistance Program (EAP) / Critical Incident Stress Management (CISM)** – EAP is a program designed to assist employees and their families by mitigating the impact of a critical incident and accelerating the recovery of those experiencing a reaction to a critical incident. The EAP promotes well-being at the CBSA. It is a confidential and free service that is available to all CBSA employees and their dependents. The CISM program responds to sudden and unusual events that can potentially overwhelm the coping skills of an individual or group.

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5. **Informal Conflict Management System (ICMS)** – an alternative approach to the prevention, management, and early resolution of conflict through a variety of means, such as alternative dispute resolution or other collaborative processes. It emphasizes collaborative problem-solving approaches and dialogue between those involved. It encourages a shift, when appropriate, from formal rights-based recourses to less formal interest-based processes such as dialogue, facilitation, and mediation.

6. **Person** – those individuals who work in the work place as well as individuals with whom the employee may come into contact while working, such as clients and the general public.

7. **Work place** – is defined in the *Canada Labour Code* as “any place where an employee is engaged in work for the employee’s employer”. This includes any area where an employee is making a delivery for the employer, any location where an employee is providing a service under the employer’s direction, and any mode of transportation (e.g., train, plane) where the employee is travelling in the course of business. It also includes attendance at conferences, seminars and training. It does not include parking lots not controlled by the employer, employees travelling to and from the work place outside working hours or locations hosting non-mandatory recreational activities that may be sponsored by the employer such as a company picnic or golf tournament.

8. **Work Place Violence** – constitutes any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

Authorities

9. *Canada Labour Code*, Part II - Paragraph 125.(1)(z.16)

10. *Canada Occupational Health and Safety Regulations* - Part XX – Violence Prevention in the Work Place

Purpose and Scope

11. The purpose of this policy is to establish a framework to prevent and protect employees from violence in the work place.

12. This policy applies to all employees, as defined by the Definitions section.

13. This policy will ensure that those who are subjected to violence in the work place are informed of the procedures for reporting, investigation and recourse and that assistance/counselling is available.

14. This policy is meant to complement, not replace, existing resources and should be read in conjunction with the CBSA Comptrollership Manual, Security Volume, Chapter 15: Reporting of Security Incidents; Chapter 26: Abuse, Threats, Stalking and Assaults Against Employees; Chapter 27: Internal Investigations into Alleged or Suspected Employee Misconduct; Policy on Use of Force Incident Reporting and Investigation; the Employee Assistance Program (EAP) Guidelines; the CISM Guidelines and Standard Operating Procedures; the CBSA Code of Conduct; and the ICMS Policy & Program Framework.

Background

15. The amendments to the *Canada Labour Code* that came into force on September 30, 2000, resulted in the increased responsibility for work place parties (employers and employees) to address occupational health and safety issues jointly in a more efficient and effective manner. Consequently, work place parties work together to ensure a healthy and safe working environment for all employees.
16. The *Canada Labour Code* states "the employer shall take the prescribed steps to prevent and protect against violence in the work place" [S. 125.(1)(z.16)]. The "prescribed steps" are outlined in the *Violence Prevention in the Work Place Regulation*.
17. This Regulation aims to improve employee safety by giving both employers and employees the tools needed to prevent and protect against work place violence.

Specific Policy Statements

18. All potential situations or occurrences of work place violence will be reported in accordance with the CBSA Comptrollership Manual, Security Volume, Chapter 15 – Reporting of Security Incidents and Chapter 26 – Abuse, Threats, Stalking and Assaults against Employees and, if applicable, Part XV of the Canada Occupational Health and Safety Regulation – Hazardous Occurrence Investigation, Recording and Reporting.
19. All reported incidents will be investigated in accordance with the applicable chapter of the Security Volume.
20. All reports involving work place violence must be sent to the Security and Professional Standards Directorate at Headquarters by the Regional Security Office using the Security Incident Report Form – BSF152.
21. If a Hazardous Occurrence Investigation Report (LAB1070) is also required, it must be sent to the Regional Occupational Health and Safety (OHS) Advisor after it is completed in accordance with existing procedures.
22. One of the ways the CBSA will assist employees who have been exposed to work place violence is through the Employee Assistance Program (EAP). EAP is available 24/7 in accordance with the Employee Assistance Program Guidelines and includes CISM defusing and debriefing following a critical incident in accordance with the Critical Incident Stress Management Guidelines and Standard Operating Procedures.
23. The Informal Conflict Management System (ICMS) process will continue to be available to all CBSA employees with the goal of fostering a respectful workplace by preventing, effectively managing, and promptly resolving conflict that may arise in the workplace. It is an important step toward preventing violence between workplace parties.
24. The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors (see Appendix C).
25. Emergency response to situations of violence will be in accordance with the Building Emergency Plan for each facility.
26. Violence Prevention in the Work Place awareness training will be required for all CBSA employees. Refresher training will be required every three years. Records of training will be maintained in the Corporate Administration System (CAS).

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27. The CBSA will not tolerate employees threatening, coercing or intimidating each other and will promptly and thoroughly investigate all reports of work place violence both internal (employee/employee) or external (employee/non-employee). Any disciplinary action taken will be in accordance with the *CBSA Discipline Policy*.
28. This policy and all aspects of the CBSA's Violence Prevention Program are accomplished in consultation with the Policy Health and Safety Committee.
29. The Policy Health and Safety Committee will continue to receive security incident reports on a quarterly basis. These reports include information on security incidents in four key areas – Assaults; Threats of Bodily Harm; Bomb Threats; and Suspicious Packages. Incidents of work place violence will be included, where not prohibited by law.

LIMITATION

30. When consulting with the Policy Health and Safety Committee or the Work Place Health and Safety Committee/Representative, management shall not disclose information whose disclosure is prohibited by law or could reasonably be expected to threaten the safety of individuals. The identity of those involved in any incidents of work place violence will not be revealed without their consent.

Roles and Responsibilities

31. The responsibility for interpretation of this policy and the Violence Prevention Program rests with the Director General, Labour Relations and Compensation Directorate.

Employees will:

32. Comply with this policy;
33. Attend training mandated under this policy;
34. Notify their supervisor of any disputes they have with other employees before the situation degenerates into violence. If the dispute is with the immediate supervisor, notify the next level of management or the Regional Security Manager;
35. Report potential situations or occurrences of work place violence to their supervisor;
36. Follow building emergency procedures; and
37. Cooperate with any person carrying out duties associated with this policy.

Supervisors will:

38. Comply with this policy and ensure all employees comply with this policy;
39. Ensure that their Building Emergency Plans are current and that step-by-step instructions for emergency notification are posted in the work place;
40. Ensure employee attendance at training that is mandated under this policy;
41. Evaluate the need for additional/refresher training on building emergency procedures;
42. Be diligent in the recognition of employee behaviour that could lead to violence;
43. Take all appropriate immediate actions to protect employees who have been exposed to violence;
44. Ensure appropriate reporting and investigation of work place violence incidents and potential incidents that are reported to them as per the CBSA Comptrollership Manual, Security Volume, specifically Chapters 15, 26, and 27 and Part XV of the Canada Occupational Health and Safety Regulations;
45. Ensure appropriate reports are completed and distributed;
46. Arrange for a Physical Threat and Risk Assessment should a previously unforeseen work place violence hazard be identified in order to implement appropriate controls;

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47. Inform the work place health and safety committee/representative of all instances of work place violence, except where prohibited by law. The identity of those involved will not be revealed without their consent; and
48. Keep a record of all reports completed by a competent person.

District/Regional Directors will:

49. Participate in identifying violence prevention needs for facilities; and
50. Actively support and assist managers/supervisors in complying with this policy.

Comptrollership Branch

Security and Professional Standards Directorate (SPSD) will:

51. Analyze incidents of work place violence where required and prepare recommendations to management;
52. Participate in identifying violence prevention needs for facilities within Headquarters;
53. Actively support and assist managers/supervisors in complying with the policy;
54. Assist with the investigation and analysis of incidents of violence or potential incidents of violence as required;
55. Provide advice and guidance to the regions regarding the completion of Physical Threat and Risk Assessments;
56. Provide periodic reports on work place violence incidents to the Policy Health and Safety Committee; and
57. Fulfill additional responsibilities relative to violence in the work place as detailed in the CBSA Security Volume.

Regional Security Managers will:

58. Assist regional management with preventing and protecting against work place specific threats that may increase the risk for work place violence;
59. Provide advice to regional management on the applicable chapters of the CBSA Security Volume;
60. Conduct or direct the conduct of investigations into incidents of work place violence;
61. Ensure that the Security and Professional Standards Directorate at Headquarters are advised of any significant incidents;
62. Ensure that all reports involving work place violence are sent to the SPSP at Headquarters; and
63. Conduct, or direct the conduct of, Physical Threat and Risk Assessments.

Infrastructure and Environmental Operations will:

64. Ensure that methods for the prevention of violence are considered during construction and/or renovation of a CBSA facility; and
65. Provide statistical reporting of security incidents to the Policy Health and Safety Committee.

Human Resources Branch

Employee Assistance Program will:

66. Promote well-being at the CBSA;
67. Provide a confidential and free service that is accessible to all CBSA employees and their families;
68. Ensure that all employees are aware of the EAP and CISM services and how to access them; and
69. Provide EAP and CISM services as per the EAP Guidelines and CISM Guidelines and Standard Operating Procedures.

CBSA ASFC

Informal Conflict Management System (ICMS) will:

- 70. Ensure ICMS services are available to all CBSA employees; and
- 71. Promote the ICMS, provide information and increase awareness of the ICMS program.

Occupational Health and Safety Division, Labour Relations and Compensation Directorate (LRCD) will:

- 72. Monitor compliance with this policy;
- 73. Ensure this policy remains current by reviewing it at least once every three years and updating it as changes are required;
- 74. Provide advice, guidance and interpretation of the *Violence Prevention in the Work Place Regulation* to employees, management, and the Regional OHS Advisors at the CBSA;
- 75. Develop, in consultation with key stakeholders, Violence Prevention in the Work Place awareness training for all employees; and
- 76. Review the Violence Prevention in the Work Place awareness training at least once every three years or as new information becomes available or if there is a change in the work place.

Regional Occupational Health and Safety Advisors will:

- 77. Provide advice, guidance and interpretation of the Violence Prevention in the Work Place Regulation to employees and management within their respective region; and
- 78. Ensure that the Occupational Health and Safety Division, LRCD is advised of any significant incidents.

References

- o HRSDC-Labour Program – Guide to Violence Prevention in the Work Place
- o Canada Centre for Occupational Health and Safety
- o Comptrollership Manual – Security Volume – Chapter 15
- o Comptrollership Manual – Security Volume – Chapter 26
- o Comptrollership Manual – Security Volume – Chapter 27
- o CBSA Employee Assistance Program (EAP) Guidelines
- o CBSA CISM Guidelines and Standard Operating Procedures
- o CBSA ICMS Policy & Program Framework
- o CBSA Code of Conduct
- o NJC Occupational Health and Safety Directive
- o TBS Policy on Prevention and Resolution of Harassment in the Workplace

Inquiries

Questions concerning this policy should be directed to CBSA's Occupational Health and Safety Division at the following mailbox: CBSA/ASFC, OHS-SST.

Appendix A

Identification of Factors that Contribute to Work Place Violence

The *Violence Prevention in the Work Place Regulation* requires the CBSA to identify all factors that contribute to work place violence. Being proactive in identifying factors allows for their assessment and control prior to the factors actually generating violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with identifying factors that contribute to work place violence.

To understand and control work place violence, we must consider all of the possible sources of violent behaviour. Work place violence can arise from:

- A person inside the work place, such as a co-worker, a manager, or an employee;
- A person related to the function of the work place, such as a traveller, client or contractor;
- A person with an indirect relationship with the work place, such as an estranged spouse or partner, or a former employee; and
- A person who is unrelated to the organization, such as a person with criminal intent.

In an effort to determine which CBSA activities may increase the risk for work place violence, a review of industry research was undertaken as well as a review of CBSA's Security Incident Reports for a period of 2004-2008 and Hazardous Occurrence Investigation Reports (HOIRs) for the period of 2007-2008. These reports are submitted by employees and supervisors. This list is not meant to be exhaustive in nature, but is intended to highlight factors specific to the CBSA.

- Working with the public
- Carrying out inspection and enforcement duties
- Working with unstable or volatile persons
- Working in small numbers
- Working in isolated or low traffic areas
- Working in high traffic areas
- Working in a 24/7 operation
- Meeting clients in their homes, in the community, or at their place of business
- Handling money, valuables
- Driving a vehicle as a job requirement
- Working with crisis and emergency situations
- Interacting with private sector employees in the following locations:
 - Sufferance/queens/bonded warehouses
 - Container examination facilities
 - Marine ports
 - Other facilities where CBSA maintains a presence
- Geographical location of our work places

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Appendix B

Assessment of Factors that Contribute to Work Place Violence

The *Violence Prevention in the Work Place Regulation* requires the CBSA to assess the potential for work place violence. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will assist the employer with assessing factors that contribute to work place violence.

Given that employees of the CBSA, especially those in an enforcement role, perform their duties in situations coinciding with the specific factors referenced in the previous Appendix, it is recognized by management and employees that the potential for violence exists on a daily basis and is considered a normal condition of employment for those in an enforcement role. The nature of our work activities includes the enforcement of over 90 Acts and Regulations at approximately 1200 service points in Canada. We also have employees stationed at various Missions around the world. It is foreseeable that some of our clients are not going to be content with the direction our employees must provide.

Certain work factors, processes, and interactions can put people at increased risk from work place violence. By nature of their work, CBSA employees may be exposed to situations involving abuse, threats or intimidation. These are all factors that increase the risk for work place violence.

As an organization, the CBSA has recognized this and put preventative measures in place to protect our employees. More details on these measures are found in Appendix D.

The CBSA will continue to assess previous unforeseen factors that contribute to work place violence through a threat and risk assessment process which establishes an order of priority and leads to control of identified factors. Information about threat and risk assessments and the process for requesting one may be found at Appendix C. If the threat and risk assessment demonstrates the existence of a violence factor that must be controlled, management will address this factor with the participation of the work place health and safety committee who will assist in the assessment of the hazard and recommend appropriate controls.

Appendix C

Physical Threat and Risk Assessments

Should an unforeseen work place violence hazard be identified, it must be promptly assessed in order to protect against it. The assessment will take place in the form of a Physical Threat and Risk Assessment.

Physical Threat and Risk Assessments (TRA) are used to identify the existence of residual risk and to provide a basis for how to mitigate that risk with physical security safeguards.

The physical TRA utilizes the standard approach for TRA's (RCMP / CSE Harmonized TRA methodology), with particular attention being paid to individuals who may commit violence (threat agent), personnel including clients (assets being protected), and conditions that could allow for events to escalate and persist (vulnerabilities).

The TRA can be conducted to assess whether or not an immediate response to a situation is warranted and, if so, the best course of action in terms of containing, minimizing and returning to normal operations following an incident. It will generally involve the Manager and, depending upon the specific case, HR (OHS, EAP) and Security specialists who can speak to the controls in place within the environment. It must be noted that information may be solicited from other groups. The goal of this exercise is to determine the most appropriate course of action--ranging from no action being required through to intervention by police.

Process for requesting a Physical Threat and Risk Assessment:

For assistance with Physical Threat and Risk Assessments, management should contact their regional security manager. Depending on the complexity of the situation, the regional security manager may forward a request for assistance to the Security and Professional Standards Directorate at Headquarters.

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Appendix D

Controls to Eliminate or Minimize Work Place Violence

After the risk factors have been assessed, necessary controls must be developed and implemented. As required by the *Canada Labour Code*, the CBSA will control risk factors for violence in accordance with the hierarchy of controls, which are elimination, reduction, and personal protective equipment. The Policy Health and Safety Committee or, for factors unique to a work place, the work place health and safety committee, will recommend controls to management to address work place violence risk factors.

A control or preventive measure must not create a new hazard. For example, if a locked security door to prevent unauthorized access is installed, it must meet the applicable fire protection requirements in case of an emergency.

When addressing controls for work place violence, it is necessary to consider human behaviour as a factor. While we can often predict a response to a certain situation, human behaviour can be spontaneous or unpredictable, making it difficult to truly eliminate risk. Along with the physical security notions implemented by the CBSA, supervisors must be cognizant in recognizing employee behaviour that could lead to a violent act. Managers are encouraged to support their employees by letting them know that there is an EAP available to them and their families and encourage them to go for support (but cannot insist that they go as EAP is voluntary). Furthermore, EAP provides advisory services for managers and union representatives to discuss how to initiate this kind of conversation with the employee.

The CBSA has taken many steps to minimize the probability of violence occurring in our work places. The following are the current controls in place at the CBSA:

Eliminate/Minimize Violence

- Threat/Risk Assessments
- Restricted Access
- Controlled Access/Card Access
- Facility Design
- Security Guards / Security Zones
- Key pad locks
- Design considerations - ditches/bollards
- Portable personal alarms
- Communication equipment
 - Radios
 - Telephones/Satellite telephones
 - Computers
- Alarms in Hearing Rooms
- Signage
- Training (see Appendix G)
- Policies/Procedures (i.e. Policy on the Use of Force, Enforcement Manual, etc.)
- Emergency Plans
- Referrals to EAP
- Security screening for employees and contractors

Protective and Defensive Equipment

- Protective vest
- Baton
- OC Spray
- Handcuffs

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- Duty Firearm

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Appendix E

Response to Violence – Emergency Procedures

Response to situations of violence will be in accordance with the Building Emergency Plan for each facility.

As required by security policy, employees will be trained on the emergency procedures to follow for their facility. Step-by-step instructions are required to be posted at a readily accessible location in the work place detailing emergency notification procedures.

Management's decision of whether or not to notify the police must take into consideration the nature of the violence and the concerns of the employee(s) who has (have) reported the incident of violence. This decision must be made in consultation with the affected employee(s).

Where an investigation is conducted by the police, notifying the work place health and safety committee/representative will depend on whether the police prohibit such notification by law. The identity of persons involved will not be disclosed without their consent.

Management will assess the need for a de-briefing of the situation with the employees involved and with members of the work place health and safety committee, as designated by the Co-chairs. Management will also provide employees who are involved in a situation of work place violence with assistance required, including referrals to EAP/CISM.

Appendix F

Notification and Investigation

Employees are required to promptly report potentially violent situations and occurrences of work place violence to their supervisor without delay. Should the work place violence be between the employee and his/her supervisor, the employee will report the occurrence to the immediate supervisor of the supervisor involved. Investigations are conducted in accordance with existing security policies.

Incidents (i.e. abuse, threats, stalking, assaults, demonstrations, etc) must be reported as stipulated in the Security Volume, Chapter 15 - Reporting of Security Incidents.

The Regional Security Officer or the Security and Professional Standards Directorate (SPSD) will provide advice, action and/or investigation. Depending on the incident, the SPSP will conduct, or cause to be conducted, an investigation that is objective and completed by a qualified competent person.

The *Violence Prevention in the Work Place Regulation* requires management to respond to reports of work place violence or alleged work place violence and attempt to resolve the matter with the employee as soon as possible. If the matter is unresolved, the manager must appoint a competent person to investigate the work place violence [see Exception below]. The competent person will investigate and provide a written report to the manager with conclusions and recommendations.

Chapters 15 and 27 of the Security Volume allow for the qualified "competent" person(s) investigating to make recommendations to management concerning appropriate corrective measures to prevent a reoccurrence as much as possible. Management is responsible for ensuring corrective measures are applied.

Exception:

A formal investigation by a competent person is not required if:

- (a) the work place violence was caused by a person other than an employee;
- (b) it is reasonable to consider that engaging in the violent situation is a normal condition of employment; and
- (c) the employer has effective procedures and controls in place, involving employees to address work place violence.

However, the obligation remains for management to attempt to resolve the matter with the employee as soon as possible.

Reports

In addition to the Security Incident Report, the following reports may be required to be completed, depending on the circumstances:

- Use of Force Report (BSF 586) – required when an officer uses force or when an officer implies with defensive equipment that force will be used.
- CBSA Hazardous Occurrence Investigation Report (LAB 1070) – required when there is an incident, a minor or disabling injury, or when emergency procedures are initiated.

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Appendix G

Training of Employees

Basic violence prevention in the work place awareness training will be provided to all CBSA employees. In addition to this, employees who work in an enforcement role attend Control and Defensive Tactics training and, when required for their work, the Duty Firearm Course.

Violence prevention in the work place awareness training will be reviewed once every three years or sooner if there is a change in respect of the risk of work place violence or when new information on the risk of work place violence becomes available.

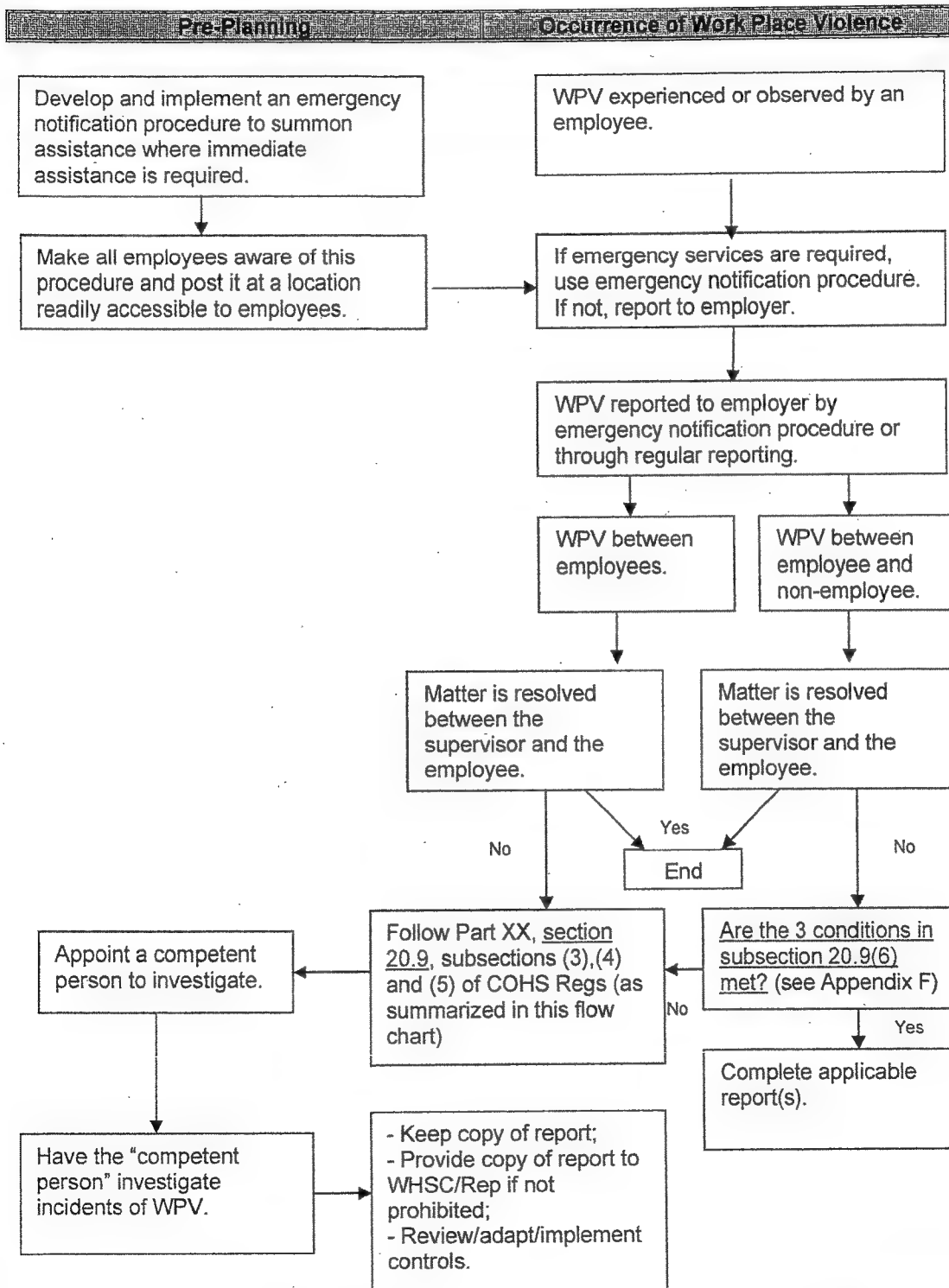
The following is a list of training related to work place violence currently available at CBSA:

- Violence Prevention in the Work Place
- Control and Defensive Tactics
- Duty Firearms Course
- Security Awareness Training
- Employee Assistance Program Information Sessions
- Coping with Stress
- Managing Psychological Health: A Salient Management Challenge in the Early 21st Century
- Moving to an Armed Workforce: Workshop for Managers
- Critical Incident Stress Management Awareness Sessions for Managers
- Informal Conflict Management System (ICMS) Workshops
 - Generations
 - Power of Words
 - ICMS @ Work
 - Difficult Conversations

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Appendix H

Flow Chart – Pre-Planning for and Investigation into Work Place Violence (WPV)



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Appendix I

Sample Emergency Notification Procedures

Employees need to be made aware of the emergency notification procedures applicable to them and a text of those procedures are required to be posted in a location readily accessible to employees. In most cases, this information will be taken directly from the Building Emergency Plan.

The following is a sample of emergency notification procedures that may be used:

IN THE EVENT YOU EXPERIENCE OR OBSERVE A WORK PLACE VIOLENCE OCCURRENCE

- Protect yourself and/or co-workers from injury
- If an emergency exists, call 911
- Notify your supervisor
- Follow the Policy for Reporting Security Incidents

The following contact information could also be included:

- Municipal emergency services (police, fire, ambulance)
- Management contact information
- Regional security contacts
- Regional Emergency Operations Centre
- Work Place Health and Safety Committee members
- Other tenants of the building
- Tenant and property managers
- Bridge/Tunnel/Airport Authorities
- US Customs and Border Patrol



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada

[Home](#) > [HRB](#) > [Policies](#) > [Labour](#) > [Conduct](#) > [Guide](#)



Code of Conduct

Guide

- [Expected Conduct](#)
- [Appearance](#)
- [Care and Use of Government Property and Valuables - Badges, Official Identification and Officer or Office Stamps](#)
- [Confidentiality and Disclosure of Information](#)
- [Conflict of Interest](#)
- [Consumptions of Intoxicants and Smoking](#)
- [Electronic Network Access and Uses](#)
- [Financial Matters - Gambling](#)
- [Gifts, Hospitality and Other Benefits](#)
- [Hours of Work](#)
- [Harassment and Discrimination](#)
- [Political Activity](#)

Expected Conduct

As an employee of the federal government, does the Code of Conduct apply to me?

Yes. The code applies to all public servants working at CBSA.

Does the Code of Conduct apply to members of senior management?

Yes. The code applies to members of senior management who are public servants working at CBSA.

Does the Code of Conduct apply to employees who take a leave of absence without pay?

Yes. The Code of Conduct continues to apply to those public servants who are on leave of absence without pay.

If I am out of town on business, can I go to the casino on my free time?

Yes. You may engage in legal activities such as gambling at a casino, while off duty. However, uniformed employees should not wear their uniform.

My personal cell phone rings while I am serving a client. May I take the call?

No. This would be disrespectful towards the client and would not be seen as being professional. Your personal cell phone should be off while serving clients. For more information refer to the Policy on the Use of Personal Electronic Communication Devices in the Workplace.

My ex-director retired more than a year ago. This morning, he called and asked me to meet him for lunch. I accepted. During the lunch, he announced that he has decided to use his knowledge, which he acquired at the Agency, to become a consultant. He will offer his services to the Agency. Did I violate the Code of Conduct by agreeing to have lunch with him?

No. However, you must remember that certain rules apply: you cannot give him information that is not easily accessed by the public. If he offers to pay for the lunch, it is better to refuse because he could have a relationship with the Agency in the future.

Appearance

Does the CBSA have a dress code?

It depends. Uniformed employees have a dress code and should refer to the CBSA Uniform Policy and Standards Of Appearance.

Non-uniformed employees do not have a formal dress code. However, the way you dress must reflect the professional image of the CBSA and the Public Service. Your appearance should always be consistent with the duties you perform.

Can I dye my hair an unusual colour such as blue or green?

It depends. Uniformed employees must follow the CBSA Uniform Policy and Standards Of Appearance which outlines that hair colour is restricted to the basic natural colours: brown, black, blond, red, grey/white. Highlights and/or streaks are acceptable providing they conform to the natural colours mentioned above.

Non-uniformed employees who have contact with clients or the general public or who represent the CBSA must always reflect the professional image of the department and the Public Service. When in doubt, speak with your supervisor or manager about the colour you are considering dying your hair.

Can I have a visible tattoo or body piercing?

It depends. You should consider the status of your position and the effect of having multiple tattoos visible would have on the public and your colleagues. When multiple tattoos/brands are visible on the arms, a long sleeve shall be worn to conceal the images.

Only discreet tattoo(s) or body piercing will be tolerated. When in doubt, ask your supervisor or manager about the type of tattoo or body piercing you are considering.

Intentional body alterations such as tongue splitting, tongue forking, disfiguring skin implants and tooth filing, etc. are not permitted.

Care and Use of Government Property and Valuables – Badges, Official Identification

Land Officer or Office Stamps

I don't like wearing my government identification card as it gets in the way. Can I just use it to gain entry into my building and then put it away in my pocket?

No. Government identification cards must be visible at all times while on CBSA premises.

As well, CBSA identification cards must be presented when requested by an employee or a security guard.

My colleague has forgotten her identification card. She wants to go out to buy her morning coffee. May I lend her my identification card so she can re-access the office without bothering anyone?

No. Official identification cards are not transferable and should never be loaned. When government identification cards are forgotten, you should see your administrator about receiving a substitute identification card to be used for the day. If you lose your card, security should be notified immediately so the access the card provides may be cancelled. Arrangements for a new identification card will then be made.

Confidentiality and Disclosure of Information

Can I discuss work in public virtual forums, such as online chat sessions or social networking Web sites?

It depends. Although the Canada Border Services Agency (CBSA) respects individual freedom of expression, you must, as a public servant, be loyal to the Government of Canada and the CBSA. When you make public statements, you must be careful not to give the impression that you are criticizing your employer. Conduct outside the workplace is normally a private issue, but it can become a professional issue if it could tarnish the Agency's reputation.

By identifying yourself or your colleagues on these Web sites as CBSA employees, your actions can compromise the Agency's security and integrity, and undermine the public's confidence in you. Providing information can also inadvertently expose your friends, colleagues or family members or yourself to unnecessary risks because information posted on the Internet can be used by anyone, anytime and for anything.

Based on the CBSA's *Code of Conduct*, behaviour outside the workplace is unacceptable if it:

- reflects negatively on the Agency or the program;
- renders you unable to fulfill a requirement of your position;
- results in your work colleagues refusing, being reluctant or unable to work with you;
- is a serious *Criminal Code* of Canada infraction and tarnishes the reputation of the Agency and its employees;
- makes it difficult for the Agency to effectively manage its operations and/or staff; or
- calls into question your impartiality in carrying out your duties.

As part of the duties of my job, I have access to personal information on clients and/or

employees. May I access an account that I am not currently working on to view the information it contains if I am careful not to discuss the information seen with anyone?

No. Curiosity is not an appropriate reason to access any accounts you have access to. Personal and sensitive data collected must be accessed by authorized personnel only when authorized.

Can policies be transmitted electronically?

Yes. Policies that are in effect are considered to be public information: they can be sent via e-mail or posted on the intranet.

Can I send classified information via e-mail?

No. Classified information cannot be transmitted using e-mail. "High-grade encryption" must be used.

When in doubt, contact the Security Directorate for a determination of the type of information you are transmitting. The Directorate will provide the necessary advice and guidance.

Conflict of Interest

While working for the federal government, may I accept part-time employment elsewhere?

It depends. You may accept employment outside the Public Service and take part in outside activities unless the employment or activities are likely to place you or appear to place you in a conflict-of-interest situation or compromise your neutrality.

Where outside employment or activities might place you or appear to place you in a real, potential or apparent conflict-of-interest situation, or cast doubt on your ability to perform your work-related duties in a completely objective manner, you must submit a completed confidential report to your manager. If it is determined that a risk of such a conflict is involved, you may be required to terminate your part-time employment.

Measures to Prevent Conflict of Interest

Conflict-of-interest cases and factors to be considered when deciding on the right course of action.

Consumptions of Intoxicants and Smoking

Can I drink alcohol at lunch and then return to work?

It depends. The public should perceive you as a professional worker. If your breath smells of liquor, your professionalism and the Agency's professionalism could be questioned. You must refrain from consuming liquor when you are on standby.

If you do not have contact with the public, the consumption of alcohol should not have a detrimental effect on your ability to perform your job effectively, and must not put you, a colleague or the public at risk. In addition, you are expected to conduct yourself in a way that does not discredit the CBSA.

For more information, please consult and respect the limits concerning the consumption of intoxicating substances that are prescribed in the Code.

I have been invited to a party Saturday night but my manager requires me to be on standby that night. Can I consume liquor at the party?

It depends. The public should perceive you as a professional worker. If your breath smells of liquor your professionalism and the Agency's professionalism could be questioned. You must refrain from consuming liquor when you are on standby.

If you do not have contact with the public, the consumption of alcohol should not have a detrimental effect on your ability to perform your job effectively, and must not put you, a colleague or the public at risk. In addition, you are expected to conduct yourself in a way that does not discredit the CBSA.

For more information, please consult and respect the limits concerning the consumption of intoxicating substances that are prescribed in the Code.

Can I smoke during my break since I am still on duty?

Yes. Collective agreements provide for rest periods during which you are not performing your duties. As long as you are not taking your rest periods in a building where the CBSA conducts its business and smoke in designated areas identified by management, you are allowed to smoke during your rest periods.

Electronic Network Access and Uses

May I use my work e-mail for personal communications with family or friends?

It depends. Limited personal use of the Internet, intranet and e-mail is permitted provided it complies with all related legislation, policies and guidelines. It should not affect your productivity or that of your colleagues and must pose no storage burden on the network. E-mails of this nature should be sent during mealtime or rest periods.

May I listen to the radio through my computer while at my desk during my work day?

No. Listening to the radio through your computer creates additional traffic on the network, which slows the system down. If it is a requirement of your job, it is possible to acquire a privileged Internet user access. A request of this type is made through your manager/supervisor.

Listening to personal CDs or to the radio using a separate radio or Walkman is permitted providing you do not work with the public and it does not infringe on your productivity or the productivity of colleagues around you. It should always be played at a volume that considers those nearby.

May I install a screensaver on my computer?

No. All screensavers must be approved and installed by Innovation, Science and Technology Branch (ITB). This ensures that all screensavers installed are deemed to contain appropriate material and a "lock" feature.

A chain letter was sent to me requesting that I send it on to other individuals. Normally, I do not forward chain letters, but this one seems to be for a good cause. It claims that money will be donated to a reputable charity for each individual the letter is sent to. Can I forward the letter as requested?

No. Chain letters creates additional traffic on the network, which slows the system down. For this reason, employees are requested to refrain from sending chain letters of any kind.

Can I use the network to communicate with my union representatives?

It depends. Limited personal use is permitted on the e-mail system when it complies with policies and legislation and is done during mealtime or rest period. This same approach applies when using the network to consult your union representative.

Can I send out e-mails to fellow staff soliciting donations or pledges for charitable activities I may be involved in?

It depends. Using the government electronic network to solicit donations for charities is an unacceptable activity, unless you are helping to raise money for charities authorized by the government such as: the Government of Canada Workplace Charitable Campaign; the Royal Canadian Legion Poppy Fund; or Red Cross Blood Donor clinics.

Are we permitted to forward cute jokes or cute pictures via e-mail? We need something to break up our day.

No. Sending this type of e-mail, especially any containing pictures causes congestion and traffic on the networks, thereby slowing down the system. Distributing junk mail and/or chain letters also causes disruption and slows the network. As a result, it is an unacceptable activity.

Can I send work home via e-mail?

It depends. Due to security issues, the nature of the information you are considering sending home must be determined. Before sending work home via e-mail, you must check with your supervisor/manager if the information is classified or designated. If it is, it must be encrypted.

Financial Matters - Gambling**Can I participate in a hockey pool at work where each participant pays \$10?**

No. According to the Canadian Criminal Code, this activity is illegal unless a licence is obtained for that purpose. The CBSA does not hold a licence for that purpose.

Can I play games of chance and place a bet of money during my coffee break or lunch hour if I do so in the lunchroom, cafeteria or other common staff area not accessible to the public?

No. According to the Canadian Criminal Code, this activity is illegal unless a licence is obtained for that purpose. The CBSA does not hold a licence for that purpose.

Gifts, Hospitality and Other Benefits**May I purchase a gift for my boss or colleague?**

Yes. In situations of this nature, you should exercise your judgement. Before giving a gift to your boss or colleague, you may wish to consider the following:

How might your generosity be perceived? Will the gift make your colleague or boss uncomfortable? Could your boss interpret your generosity as potentially influencing his/her objectivity towards you in the future? Could your colleague interpret the fact that you are giving a gift to your boss as a way for you to attempt to receive favour from the boss in the future?

May I receive a gift from a client or supplier?

It depends. Before accepting a gift, you may wish to consider the following:

- How will others perceive your acceptance of the gift, benefit or hospitality?
- Could the gift be perceived as potentially influencing your judgement?
- Could the hospitality call into question your professional integrity or the integrity of the CBSA?

You may receive a gift only if, the giving of gifts:

- is infrequent and of minimal value, such as low-cost promotional items like an inexpensive pen or cup;
- arises from activities or events related to official duties;
- is within the normal standards of courtesy, hospitality or protocol; and
- does not compromise or appear to compromise in any way your integrity or the integrity of the CBSA.

When in doubt, you should decline the gift, hospitality or other benefit. Regardless of whether you accept or decline the gift, hospitality or benefit, you should advise your immediate supervisor in writing of the situation and how you handled it.

For more information, see Gifts, Hospitality and Other Benefits section in the Values and Ethics Code for the Public Service.

As part of my job, I am often searching for consultants to perform various projects. As a result, I have come to know many of the consultants we have dealt with in the past.

Currently, I am looking for consultants to work on a project for which Public Works Government Services Canada has posted a standing offer inviting consultants to bid for the contract.

While I am on coffee break, a consultant who may bid on the contract happened to be in front of me in the line and offers to pay for my coffee. May I accept?

No. In this case, it is the situation that you must be sensitive to and not the cost. The coffee itself is not the issue, the circumstances surrounding it are. The gesture of purchasing a cup of coffee could be perceived as a conflict of interest, if a competing consultant witnessed the scene.

As a result of my efficient and friendly service at the border, a grateful client wants to give me a basket of fruit for Christmas. I have processed this client many times in the past as part of the formalities involved in crossing the border, and as a result, I have come to know him well from a professional perspective. May I accept the gift?

No. In this situation, it would be unacceptable for you to accept the gift. No matter how inexpensive or innocent the gift may appear, you must consider whether you are being placed in a real, apparent or potential conflict of interest. Although the gift may have been given with only kindness and gratitude in mind, there may exist the potential for individuals to perceive that the donor of the gift may have ulterior motives.

You should always try to consult your supervisor before accepting any gift or hospitality to ensure that a conflict of any kind does not exist. Accepting the gift may place you in a position where the gift may have to be returned to the donor.

My manager informed me that it would not be appropriate to keep a gift that I received recently. As a result, I left the gift with my manager only to discover later that he had used the gift (e.g., theatre tickets). Can I report this situation?

Yes. This is wrong and it is important that you disclose the situation either to your manager's boss or the Agency Champion for Values and Ethics.

Hours of Work

May I take my rest periods and my meals whenever I want?

No. Meals and rest periods are scheduled around the requirements of the work place environment. You need to speak with your supervisor in advance to determine when you should take your rest periods and meals.

The duration of your rest periods is indicated in your collective agreement.

If your position is not governed by the terms of a collective agreement, check the Terms and Conditions of Employment Policy.

I am a heavy smoker. I wish to take numerous rest periods to smoke while respecting the hours of work required by my collective agreement. Can my supervisor modify the number and the length of time for my rest periods?

No. Management cannot make arrangements contrary to the collective agreement.

Should your smoking habit cause you difficulties in your work, you may want to consult a resource person from the Employee Assistance Program.

To familiarize yourself with the number and the length of rest periods to which you are entitled, see your collective agreement.

I am a morning person and feel that I am more productive when I start my day early. Can I start my day at 6:15 a.m.?

It depends. Unless your position requires shift work or you have been asked to do overtime, most collective agreements state that the working day begins at 7 a.m. Management cannot make arrangements contrary to the collective agreement.

You can verify the start time stated in your collective agreement.

Can I have non-work-related conversations with my colleagues during my working day?

It depends. Being social at work is part of workplace well-being, which emphasizes social and psychological dimensions.

However, the conversation during your work should be limited in time, should not affect the service you provide or your productivity and should never be in front of clients, as this would be disrespectful and unprofessional.

Harassment and Discrimination

A colleague keeps staring at me and it is beginning to make me feel uncomfortable. I

Have done nothing to encourage this behaviour. Is this person's behaviour unacceptable?

Yes. If this situation is making you feel uncomfortable, then the behaviour is inappropriate. However, the person may not be aware of what he/she is doing or the impact the behaviour is having on you. Before reporting this behaviour to your supervisor, you should inform the person that this behaviour is making you feel uncomfortable and you should ask your colleague to stop staring at you.

A colleague has sent a few of us an e-mail containing racial comments. I found the comments to be offensive and in poor taste. Should I report this e-mail?

Yes. E-mails associated with racial discrimination are unacceptable even if they are not sent with discriminatory intent. Correspondence of this type can alienate employees and can encourage a poor work environment. The CBSA wants to foster a working environment in which employees feel comfortable and respected.

If you are a supervisor/manager, you must deal with this situation regardless of the degree of severity. The *Discrimination Act* dictates zero tolerance for any correspondence of this type and, as a result, as a supervisor/manager, you are expected to respond promptly. Situations of this nature must be dealt with on a case-by-case basis and, as always, good judgement should be used when assessing the situation.

Policy on the Prevention and Resolution of Harassment in the Workplace

Political Activity

Do the provisions outlined in the *Public Service Employment Act* apply to political activities outside work hours and off work premises?

Yes. Regardless of when and where political activity occurs, it may impair or be seen as impairing your ability to perform your duties in a politically impartial manner. Before becoming involved in any political activity, you should speak to your supervisor so that your specific situation can be assessed.

Guidance Document

As a public servant, can I run for municipal, provincial or federal office?

It depends. Before announcing your intention to seek a nomination, you must write to the Public Service Commission requesting permission. Your request for candidacy will be analysed and, once a decision has been made, you will be notified of the results. You are then expected to act in accordance with the recommendation.

Political Activity

Do I have to submit a confidential report to report my political activities to my manager?

It depends. If you are not appointed under the *Public Service Employment Act*, for example if you are a casual employee, you must submit a confidential report to your manager.

If you are appointed under the *Public Service Employment Act*, you do not need to submit a confidential report; however, you must consult the Public Service Commission of Canada's Web site and complete the self-assessment tool for political activities. Be sure to print out a copy for

your records. Consult your manager if you have any concerns about the appropriateness of political activities you want to take part in.

Date Modified: 2010-07-30

Canada Border
Services AgencyAgence des services
frontaliers du Canada

Canada

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Code of Conduct

Message from the President and the Executive Vice-President

Employees at the Canada Border Services Agency (CBSA) share a commitment to create a working culture based on public service and CBSA values and ethics — a culture where public trust is acknowledged by the integrity and professionalism of CBSA employees.

With this commitment in mind and inspiration from existing codes in the legacy organizations, the CBSA developed and created its own code of conduct. The *CBSA Code of Conduct* was designed to help you know the standard of conduct expected of you at the CBSA. Whether you serve at a port of entry, provide client services, respond to appeals, provide services to other employees, manage programs and resources, or carry out the many important facets of the CBSA's mandate, the Code clarifies the CBSA's values and principles and will help you in making ethical decisions. This Code should be viewed as a supplement to the *Values and Ethics Code for the Public Service*.

We encourage you to read the *CBSA Code of Conduct* to fully appreciate its guidance and our corporate values as they relate to your work. We count on each one of you to integrate the values, principles, and professional standards of conduct in your actions in the service of this Agency.

Alain Jolicoeur
President

Stephen Rigby
Executive Vice-President

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Mandate and Mission

The mandate of the Canada Border Services Agency (CBSA) is to provide integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all legislative requirements.

The mission of the CBSA is to ensure the security and prosperity of Canada by managing the access of people and goods to and from Canada.

Accountability

You are responsible for behaving ethically and in keeping with the values and standards set out in the *Values and Ethics Code for the Public Service*, which forms part of the conditions of employment in the Public Service of Canada. The *CBSA Code of Conduct* is an extension of the *Values and Ethics Code for the Public Service* and both codes apply to all public servants working at the CBSA.

Public Service Values

- ➔ Democratic Values: Helping the Minister, under law, to serve the public interest.

Complete definitions can be found in the *Values and*

Code of Conduct

- ➔ Professional Values: Serving with competence, excellence, efficiency, objectivity and impartiality.
- ➔ Ethical Values: Acting at all times in such a way as to uphold the public trust.
- ➔ People Values: Demonstrating respect, fairness and courtesy in their dealings with both citizens and fellow public servants.

Ethics Code for the Public Service.

CBSA Values

- ➔ Integrity: We exercise our authority in a principled, open and fair manner. We will accept responsibility for our actions in order to build and maintain a reputation of trustworthiness and accountability.
- ➔ Respect: We show the utmost appreciation for the dignity, diversity and worth of all people. We do this by listening to others to understand their positions and by behaving in a just, courteous and reasonable manner. We respect the privacy of Canadians and strongly uphold the *Canadian Charter of Rights and Freedoms*.
- ➔ Professionalism: We set high standards of achievement for our employees and strive for the provision of competent, quality service. In particular, we are innovative and harness smart technology to perform our mission.

Definitions of the CBSA's values are in the 2004 - 2005 Departmental Performance Report.

Leadership Conduct

We can each be a model for others and, as such, be a leader. You are expected to demonstrate leadership by respecting the *CBSA Code of Conduct*.

You are expected to:

- ➔ provide effective, responsible and fair service to all people;
- ➔ exemplify public service values and the CBSA's corporate values;
- ➔ maintain open, positive communications and working relationships; and
- ➔ respect equity and diversity in all their dimensions.

Managers shall ensure that all employees under their responsibility are familiar with the *Values and Ethics Code for the Public Service* and the *CBSA Code of Conduct*. Managers should also recognize excellence and encourage personal and professional development in a learning environment.

Expected Standards of Conduct

The following section outlines in general terms the **main standards** of conduct to be followed, at a minimum, by all CBSA employees. The standards of conduct will naturally evolve over time, in response to and in keeping with changes to the service the CBSA provides.

a) Appearance

General policy

See the CBSA Uniform Policy and Standards of Appearance.

You must ensure that your appearance and dress reflect the professional image of the CBSA and the public service. You are expected to be neat, clean and well groomed. Your appearance and dress must be consistent with the duties that you perform and must not interfere with the work performance of other employees.

Uniformed employees

Uniformed employees must follow the CBSA Uniform Policy and Standards of Appearance.

b) Care and Use of Government Property and Valuables

You must not use property, equipment, materials, vehicles or facilities purchased, used or leased by the CBSA for other than official purposes, unless you have received proper management authorization. This includes, but is not restricted to, vehicles, buildings, space, premises, facilities, uniforms, files and documents, office equipment and supplies, computers, software, video equipment, telecommunications devices such as cell phones, government credit cards, telephone calling cards and defensive equipment like pepper spray, handcuffs, batons and duty firearms.

You cannot transport anyone in a government-owned or leased vehicle, aircraft or vessel unless that person's presence is connected with an official assignment, authorized by management, or it is in the best interests of the CBSA.

You are expected to account for and protect any government property and valuables that you possess or control. If any item is lost, stolen or damaged, you must immediately report the incident to your manager.

Badges, official identification and officer or office stamps

You must use badges, official identification and officer or office stamps only for the purposes for which they were intended and in the best interests of the CBSA. A government identification card must be displayed on government premises when you are asked to identify yourself as a government representative.

You are prohibited from using your job title, badge or any other official identification to obtain or appear to obtain any privilege, favour for yourself or others, or to do anything that is illegal, improper or against the best interests of the CBSA. Such infractions will be considered serious and will result in disciplinary action.

See the TBS Guidelines for Discipline and the CBSA Discipline Policy.

If your badge, stamp or official identification is lost, stolen or damaged, you must immediately report the occurrence to your manager. If you are temporarily or permanently reassigned and your new functions do not require the use of a badge, stamp or official identification, you must return them to your manager.

Intellectual property

You cannot market or sell anything created, designed, developed or produced as part of your job, even if you, or any other person, have improved or modified it outside working hours.

See section 12 of the Copyright Act and section 3 of the Public Servants Inventions Act.

Returning government property and valuables when leaving the job

Unless you have received proper management authorization, you must return all government property and valuables received as part of your duties when you leave your position or when you are so requested by a proper authority.

c) Confidentiality and Disclosure of Information

You must ensure that you comply with all legislation, directives and procedures relating to the collection, use, sharing, storage, disclosure, distribution and disposal of any personal information pertaining to individuals or commercial information pertaining to businesses.

When you took the Oath of Office and Secrecy/Solemn Affirmation of Office and Secrecy you swore or affirmed that you would not disclose or make known any matter that comes to your knowledge by reason of your employment. You must keep in strict confidence all information you obtain about the CBSA's clients and all other official information to which the public does not have access. This includes information about policies, programs, practices and procedures to which the public does not have official access.

You may disclose this type of information to clients or designated representatives only if specifically authorized by legislative or departmental guidelines.

See section 107 of the Customs Act and memoranda D1-16 Explanation of Section 107 of the Customs Act and D1-16-2-INTERIM - Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information and D1-16-2.

You may access official information only if authorized and required for work. Under no circumstances may you use this information for personal use, gain or financial benefit for yourself, your relatives or anyone else.

You are required to safeguard official information and must use, process, store and handle designated or classified information only for purposes specified by the CBSA. You may not remove, hide, change, mutilate, copy or destroy any official information.

You are prohibited from destroying, altering, falsifying or concealing a record, or directing anyone to do so, with the intent of obstructing the right of access set out in section 67.1 of the Access to Information Act or disclosing any personal information without proper authorization as set out in the Privacy Act.

Consult your manager if you are uncertain about how to treat specific information.

When you leave the employment of the CBSA, you cannot take with you or retain any CBSA records or documents, including paper documents, CDs and diskettes with electronic

information, video, etc., unless authorized by your manager.

Providing testimony or information

You must cooperate and assist in the conduct of governmental investigations such as an investigation conducted by Internal Affairs Division or a Health and Safety Officer who is carrying out his or her duty under the *Canada Labour Code*. You must provide information and complete access to the CBSA information systems, documents and records to an investigator to the extent that such access is legally permitted.

You are required to give testimony on behalf of the CBSA or the Crown in court and/or before any administrative tribunal or panel. While you are obligated to assist in investigations ongoing under Government of Canada legislation, you should consult your manager before assisting a provincial or foreign authority.

d) Conflict of Interest

You must comply with the *Values and Ethics Code for the Public Service*. This means that you must avoid and prevent situations that could give rise to a real, apparent or potential conflict of interest. If a conflict does arise between your private interests and your official duties, the conflict should be resolved in favour of the public interest. You must never act in a manner that is damaging or potentially damaging to the CBSA or the Public Service of Canada.

You cannot use your position to influence or bypass CBSA procedures for personal gain or the benefit of your family, friends, colleagues or anyone else.

You must report to your manager all circumstances that may place you in a situation of real, apparent or potential conflict of interest. If you are unsure or do not know if your actions, activities or situation constitutes, or could appear to constitute, a conflict of interest, ask or report it to your manager in writing by submitting a confidential report.

e) Consumption of Intoxicants and Smoking

You must never report to work under the influence of alcohol or illegal drugs. You are not permitted to consume alcohol or illegal drugs while on duty, in uniform (on or off-duty), operating an official vehicle, or on any premises where the CBSA conducts its business.

However, it is recognized that, on occasion, consumption of alcohol may take place on CBSA premises in connection with the celebration of special events. Such activities must be authorized by management and take place in areas not open to the public. Following these activities, you must be able to carry out your responsibilities effectively. Impairment due to the use of alcoholic beverages will not be tolerated.

You are not permitted to smoke on duty (unless you are on a rest period) or in any building where the CBSA conducts its business.

) Contact with the Public and the People You Work With - Sensitivity, Respect and Responsiveness

At all times, you must be courteous and respectful towards the public and people you work with, even under difficult conditions such as in times of personal stress and in the face of provocation.

You must never make abusive, derisive, threatening, insulting, offensive or provocative statements or gestures to or about another person.

You are prohibited from engaging in any discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

See section 2 of the Canadian Human Rights Act.

It is recognized that, at times, it is difficult to work with the public and that learning how to deal with difficult people is part of the job. At times, clients' actions may be abusive or threatening or even result in personal assault. You may have to resort to reasonable use of force in certain situations. However, you must exercise the use of reasonable force in accordance with training procedures, CBSA policies and the *Criminal Code of Canada*. The CBSA will provide you with protection, support and assistance in accordance with the policy on the Policy on Legal Assistance and Indemnification. The policy provides for both indemnification and legal assistance with respect to liability arising from circumstances in which you "acted honestly and without malice within the scope of [your] duties or employment and met reasonable departmental expectations."

See the Policy on Legal Assistance and Indemnification.

You must promptly report full details of any incident to your manager and cooperate in any subsequent investigation.

g) Electronic Network Access and Uses

If you have access to, or use the CBSA's computer systems, equipment or software, you must make every effort to protect the CBSA from any possible threats to security by, in particular:

- ➔ guarding against accidental or deliberate destruction of data and equipment; disclosure of sensitive information, access identification and password to your system; theft and corruption; and exposure to viruses;
- ➔ following the CBSA's policies and procedures regarding the access restrictions to data banks and the posting of information;
- ➔ following the CBSA's policies and procedures regarding the purchase and use of software and other systems use, including complying with security restrictions; and
- ➔ reporting any breach of computer security, policies and standards to your manager.

CBSA's computer systems or those of external agencies accessed via the CBSA's network, software, equipment, networks, Internet, intranet and e-mail are for authorized business purposes.

However, limited personal use of the Internet, intranet and e-mail is permitted provided it complies with all related legislation, policies and guidelines, does not affect your productivity

or that of your colleagues, and imposes no storage burden on the CBSA computer systems. Examples of acceptable limited personal use include professional activities, career development, or reading or writing a brief e-mail after hours or during a lunch break.

Some examples of misconduct related to the use of electronic networks that are offences under the *Criminal Code of Canada* are:

- ➔ knowingly viewing, downloading, possessing or distributing child pornographic images or material;
- ➔ communicating images, material or e-mails containing offensive language or inappropriate comments that are likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule, or that are designed to insult the person;
- ➔ infringing copyright; or
- ➔ hacking and trying to defeat the security features of electronic networks.

See Treasury Board's *Policy on the Use of Electronic Networks*, *CBSA Policy on the Use of Electronic Resources* and the *Guidelines for the Policy on the Use of Electronic Resources*

Authorized officers may access restricted sites, such as those with pornography or hate propaganda, when conducting authorized investigations or intelligence probes or when researching and developing CBSA-sanctioned training material. CBSA officers may be required to view all types of material to make determinations with respect to admissibility.

h) Financial Matters

Borrowing or lending money

Employees must not:

- ➔ borrow money from a client;
- ➔ present a personal cheque to be cashed by a client; or
- ➔ ask any employee to sign a financial instrument, as an endorser or co-signer, to secure an amount of money being lent or borrowed, unless that employee is a spouse or common-law partner (or relative).

Care of money, credit cards and items having a financial value

You must follow established procedures and reasonable standards of care in accounting for, safeguarding and using government money, credit cards and any type of item having a financial value such as phone cards in your possession or control.

You must report immediately to your manager if monies, credit cards or any type of item having a financial value is misplaced, lost or stolen, while in your care.

Endorsing cheques

You are prohibited from endorsing cheques, both personal and business, made payable to "cash" issued by customs-house brokers, importers or their agents. If you endorse such a cheque, you may find yourself contributing to a possible misappropriation of business funds.

Illicit Gambling

You are not permitted to gamble on CBSA premises or while on duty. The Treasury Board *Policy on the Use of Electronic Networks* prohibits the use of computer systems and electronic networks for the purpose of illicit gambling.

Draws, usually called "50-50" draws, i.e., collections taken up by public servants to establish a sum of money, half of which would go to the winner of the draw and the other half to a charity, are not covered by the *Values and Ethics Code for the Public Service* because they do not constitute solicitation of the private sector. The draws are social and voluntary activities, shared by public servants. However, you should be aware that draws of this type are regulated by provincial authorities and subject to licensing requirements.

Legal provisions and fraud

You must comply with all legal provisions governing financial matters and safeguard against any potential situations of fraud or inappropriate use of funds as stated in the *Financial Administration Act* and the *Criminal Code of Canada*.

You must tell your manager immediately if you have knowledge of, or are aware of, any violation or fraud.

You are prohibited from conspiring or colluding to defraud the Crown, or providing the opportunity to another person to do so, or intentionally permitting a person to contravene the law.

i) Gifts, Hospitality and Other Benefits

In accordance with the *Values and Ethics Code for the Public Service*, you must not accept or solicit any gifts, hospitality or other benefits that may have a real or apparent influence on your objectivity in carrying out your official duties or that may place you under obligation to the donor. This could appear as influencing or potentially influencing your judgment, or calling into question your professional integrity or the integrity of the CBSA.

If a gift is offered to you, you should advise your immediate supervisor in writing, regardless of whether you accept or refuse the gift, hospitality or benefit.

Acceptance of gifts, hospitality and other benefits is permissible if they:

See the *Values and Ethics Code for the Public Service*.

- ➔ are infrequent and of minimal value such as low-cost promotional objects, simple meals or souvenirs with no cash value;
- ➔ arise out of activities or events related to official duties of the public servant concerned;
- ➔ are within the normal standards of courtesy, hospitality or protocol; and
- ➔ do not compromise or appear to compromise your integrity or that of the CBSA in any way.

In case of doubt, you should decline the gift, hospitality or other benefits.

Where it is **impossible to decline** gifts, hospitality and other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the CBSA to warrant acceptance of a certain type of hospitality, you must discuss it with your manager, who will seek **written direction from the manager delegated to make decisions on conflict of interest**. You will then be notified in writing whether the gift, hospitality or other benefit is to be declined or retained by the CBSA, donated to charity, disposed of or retained by you.

j) Solicitation of Gifts, Hospitality and Other Benefits

At no time should you solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or organization in the private sector who has dealings with the government.

In the case of fundraising for charitable organizations, you should ensure that you have prior authorization from your manager, who will seek written authorization from the **manager delegated to make decisions on conflict of interest**, to allow you to solicit donations, prizes or contributions in kind from external organizations or individuals.

See the Values and Ethics Code for the Public Service.

k) Harassment and Discrimination

Harassment is any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, and any act of intimidation or threat.

Everyone is entitled to work in an environment free from harassment and discrimination. Harassment and discrimination affect workplace and individual well-being and will not be tolerated.

While management is responsible for fostering a work environment free from harassment, it is everyone's responsibility to treat fellow employees with fairness, respect and dignity.

You are prohibited from engaging in any improper conduct that is directed at and offensive to another person or persons in the workplace, and that you know or ought reasonably to know will cause offence or harm.

See the Treasury Board Policy on the Prevention and Resolution of Harassment in the Workplace.

You are prohibited from engaging in any discriminatory or harassing behaviour, action or inaction that could harm an employee's working relationships, job security or general well-being at work. This includes discrimination or harassment of CBSA employees that may happen outside the workplace or outside working hours, that harms an employee's working relationships, job security or general well-being at work. Harassment is a serious matter and the filing of frivolous or unsubstantiated harassment claims is not acceptable.

If you witness harassment or discrimination or are being harassed, you should speak to your manager and seek his or her support in this situation.

() Hours of work

Your hours of work and rest periods must be consistent with the provisions of your collective agreement.

You must be punctual so you can be relied upon by the people for whom you work or for the people who work for you. Whenever you need to change your regular work schedule, such as to request leave, leave work early or change your break or meal periods, you must do so in accordance with the established procedures in your workplace.

If you are to be absent from work because of illness or emergency, you need to explain the circumstances to your supervisor and inform him or her in advance of when you expect to return to work.

m) Off-duty Conduct

General

Your off-duty conduct is usually a private matter. However, it could become a work-related matter if it:

- ➔ harms the Agency's reputation or program;
- ➔ renders you unable to perform a requirement of your duties;
- ➔ leads other employees to refuse, be reluctant or be unable to work with you;
- ➔ renders you guilty of a serious breach of the *Criminal Code of Canada* and thus renders your conduct injurious to the general reputation of the Agency and its employees. For example, the nature of the criminal charges may be incompatible with the functions of a peace officer;
- ➔ makes it difficult for the Agency to manage its operations efficiently and/or to direct its workforce.

Criteria found in Millhaven Fibres Ltd., Millhaven Works, and Oil, Chemical and Atomic Workers Int'l Union, Local 9-670 (1967), 1 (A) Union-Management Arbitration Cases 328. These criteria were subsequently adopted by the PSSRB in several decisions.

You must report to your manager as soon as possible if you are arrested, detained or charged with a violation in Canada or outside Canada of laws, regulations, a federal statute or the *Criminal Code of Canada* related to your official duties. You must report a traffic violation or highway code ticket received during the use of a government-owned or leased vehicle.

Political activity

You may engage in any political activity so long as it does not impair, or is not perceived to impair, your ability to perform your duties in a politically impartial manner. You should consult your manager if you are unsure whether the political activity you want to engage in is appropriate.

See the guidance tools published by the Public Service Commission to help you make reasonable decisions about your involvement in political activities in light of specific circumstances.

When taking part in political activities, you must ensure that the nature of your participation does not conflict with your ability to:

- ➔ remain loyal to the Government of Canada;
- ➔ maintain an impartial and effective public service; and
- ➔ be politically neutral, in consideration of your position and visibility as a CBSA employee.

In order to be a candidate in a federal, provincial or territorial election, you have to request and obtain a leave of absence without pay from the Public Service Commission.

In order to be a candidate in a **municipal election**, you have to request and obtain **permission** from the Public Service Commission.

n) Publicly Commenting for the CBSA

Only authorized spokespersons can issue statements or make comments about the CBSA's position on a given subject. If you are asked for the CBSA's position, you must refer the inquiries, through your manager, to the Communications and Consultation Directorate or the authorized CBSA spokesperson.

o) Public Criticism of the CBSA

The duty of loyalty owed by public servants to the Government of Canada encompasses a duty to refrain from public criticism of the Government of Canada. Failure to observe the duty of loyalty may justify disciplinary action, including termination of employment. However, the duty of loyalty is not absolute and public criticism may be justified in certain limited circumstances. For further guidance, refer to the Duty of Loyalty - Summary, a paper written by the Public Service Agency of Canada.

CBSA employees must exercise caution in ensuring that public statements:

- ➔ do not undermine or compromise the integrity or security of CBSA operations or national security;
- ➔ do not impair or conflict with their ability to carry out duties;
- ➔ do not call into question their impartiality in carrying out their duties; or
- ➔ do not impair the ability of the CBSA in carrying out its mandate.

If in doubt, you are strongly encouraged to discuss the matter with your manager.

You should use internal means to bring any criticisms you may have to the attention of CBSA management.

p) Safety and Security

While on the job, you must observe safety and security standards, rules and procedures established for the workplace and the use of equipment. You must report to your manager promptly, when there is a threat or any work-related hazard, accident or injury to yourself or other employees.

See the Canadian Labour Code, the Canada Occupational Health and Safety Regulations, the Refusal to Work Directive and other Treasury Board policies and directives.

You must immediately notify your manager or a security officer if you become aware of:

- a security infraction;
 - a negligent or criminal act;
 - an unsafe or hazardous condition at work;
 - an accident or injury to yourself or other employees; or
 - a failure on the part of any employee to observe workplace safety and security standards, rules and procedures.
-

q) Terms and Conditions of Employment

You must observe the terms and conditions of employment contained in your collective agreement, as well as those set out in CBSA and Treasury Board policies.

r) Unions and Similar Employee Associations

The CBSA respects the right of employees to belong to employee organizations (unions) and to take part in their legal activities.

The Public Service Labour Relations Act (PSLRA) contains prohibitions against:

- intimidating employees in the creation or administration of employee organizations;
 - canvassing for members on the employer's premises during the working hours of an employee;
 - restraining employees from becoming members of an employee organization;
 - discriminating against a member of an employee organization in regard to employment or to any condition of employment, for example; or
 - intimidating an employee, by threat of dismissal or any other kind of threat, to cause the employee to abandon his or her grievance or refrain from exercising his or her right to present a grievance.
-

Disclosure of Information Concerning Wrongdoing in the Workplace

Wrongdoing is defined as the following:

- a. the contravention of an Act of Parliament or of the legislature of a province, or of any regulations made under any such Act;
- b. the misuse of public funds or assets;
- c. gross mismanagement in the federal public sector;
- d. a serious breach of a code of conduct;
- e. an act or omission that creates a substantial and specific danger to the life, health and safety of Canadians or the environment; and
- f. knowingly directing or counselling a person to commit a wrongdoing.

When you have reasonable grounds to believe that another person has committed a wrongdoing in the workplace, you should first talk to your manager. As a last resource at the Agency, you can disclose this information to the CBSA Senior Officer for the Disclosure of Wrongdoing in the Workplace with confidence that you will be treated fairly. If the matter is not appropriately addressed at this level or you have reason to believe it could not be disclosed in confidence within the Agency, it may be referred to the Public Sector Integrity Commissioner.

When you disclose information concerning wrongdoing, you are expected to:

- ⇒ follow the internal processes established to raise instances of wrongdoing in the workplace; and
- ⇒ respect the reputation of individuals by not making trivial or vexatious disclosures of wrongdoing or by making disclosures in bad faith.

All managers and staff have a responsibility to ensure that allegations or evidence of misconduct or malfeasance are reported immediately.

See the Treasury Board Public Servants Disclosure Protection Act.

It is the policy of the CBSA that all allegations or evidence of employee misconduct or malfeasance must be investigated to ensure that the professional reputation of CBSA employees and the integrity of CBSA operations are protected. Appropriate measures must be taken as a result of misconduct or malfeasance.

When an activity, statement or documentation comes to your attention and you think it may involve or constitute improper (or criminal) activity, you must report the incident to your manager **immediately**.

Disciplinary Action for Breaches of the Code

CBSA employees who are found to have breached the *Values and Ethics Code for the Public Service*, the *CBSA Code of Conduct* or CBSA policies may be subject to disciplinary measures based on the seriousness of the misconduct and in accordance with the *CBSA's Discipline Policy*. In cases of serious misconduct, the disciplinary action could be termination of employment. Some cases of misconduct may result in an employee being found guilty of an indictable offence and liable, on conviction, to fines and/or imprisonment based on legislative and regulatory requirements.

See the Criminal Code of Canada, the Customs Act, the Immigration and Refugee Protection Act, etc.

On a final note...

This Code was created to guide your conduct as a public servant and a CBSA employee. However, it is impossible to cover all the situations you may face in the performance of your duties. In such situations, you must determine the appropriate course of action, based on common sense and public service values. Asking yourself the following questions should help you to make the right decision:

- ➔ Is what I want to do legal and consistent with CBSA/public service policies?
- ➔ Is what I want to do consistent with CBSA/public service values?
- ➔ What are the consequences of the action I am about to take or the decision I am about to make?
- ➔ If I do it, will I feel comfortable?
- ➔ How will the media or general public perceive this action?

Remember:

- ➔ If you know it is wrong, or it "feels" wrong, don't do it!
- ➔ If you are not certain, ask questions.
- ➔ Continue to ask until you get an answer.

Appendix

Reference Documents

Following is a list of reading resources that relate to the *CBSA Code of Conduct*. It is by no means exhaustive, but it includes the most relevant material.

CBSA Policies and Directives

CBSA Uniform Policy and Standards of Appearance

Discipline Policy

Arming Initiative - Related policies

Policy on the Use of Electronic Resources

Acts and Regulations

Canada Labour Code

Copyright Act, section 12

Criminal Code of Canada, section 122

Customs Act, section 107

Financial Administration Act

Public Servants Disclosure Protection Act

Public Servants Inventions Act, section 3

Public Service Employment ActPublic Service Labour Relations Act

Treasury Board Policies

Guidelines for Discipline

Harassment in the Workplace – Policies and Publications

Occupational Safety and Health – Policies and Publications

Refusal to Work Directive

Uniforms Directive

Policy on the Use of Electronic Networks

Values and Ethics Code for the Public Service

Customs Memoranda

D1-16-1 - Explanation of Section 107 of the Customs Act

D1-16-2-INTERIM - *Interim Administrative Guidelines for the Provision to Others, Allowing Access to Others, and Use of Customs Information*

Date Modified: 2010-07-30

Comptrollership Manual - Security Volume
Chapter 27: Internal Investigations into Alleged or Suspected Employee Misconduct

Appendix A

Manager's Guide to Conducting Internal Investigations

Internal Affairs Section
Corporate Security and Internal Affairs Division
Comptrollership Branch June 2006

3. Responsibilities

Directors are responsible for promptly reporting to the Manager, Internal Affairs, all allegations of employee misconduct or incidents without fail. Items to be reported are as specified in the CBSA Comptrollership Manual, Security Volume, Chapter 27 - Internal investigations into alleged or suspected employee misconduct or any other incident which could effect the public trust in the CBSA or its working relationship with other law enforcement partners. When apprised of an allegation of employee misconduct, the Director or his delegate will conduct a preliminary inquiry by gathering information to determine whether based upon the balance of probabilities the allegation is founded or not. If there is sufficient evidence to presume that the allegation is founded, the Director will report the matter to the Manager, Internal Affairs without delay. Following consultation the Manager, Internal Affairs will determine whether the matter would best be investigated locally or whether Internal Affairs will investigate the matter. In requesting an investigation, Directors must clearly state the purpose of any investigation and shall provide a written request, to IA accompanied by the report of the preliminary inquiry. When it has been agreed that local management is to conduct the investigation, Directors shall provide IA with a copy of the investigation report and of its conclusions.

Comptrollership Manual - Security Volume
Chapter 27: Internal Investigations into Alleged or Suspected Employee Misconduct

Policy

Date Modified: 2007-10-29

Internal Affairs Section, Corporate Security and Internal Affairs Division

9. Internal Affairs, CSIAD, subject to legal and jurisdictional constraints, is responsible for:
 - Conducting, or causing to be conducted, investigations into alleged or suspected employee misconduct involving:
 1. (vii) Breaches of the CBSA and Public Service Commission Code of Ethics and Conduct, or other administrative policies.

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Evans, Daniela

From: Hepplewhite, Robert
Sent: September 7, 2011 07:05 PM
To: Evans, Daniela
Subject: Re: Border officer sues for workplace sexual harassment
Sensitivity: Private

From: St John, Faith
Sent: Wednesday, September 07, 2011 06:58 PM
To: Bolton, Bernée; Baird, Trevor; Peterson, Ivan
Cc: Collins, Derek; Steeksma, Erin
Subject: Border officer sues for workplace sexual harassment

Just posted on the Vancouver Sun website

Border officer sues for workplace sexual harassment

By NEAL HALL, VANCOUVER SUN September 7, 2011 3:26 PM

VANCOUVER -- A border officer with the Canada Border Services Agency is suing her employer and a work colleague for sexual harassment and mental abuse.

Michelle Andrea Pele of Surrey claims in her legal action that her colleague Marco Castagna insulted her, made sexually explicit comments about her and other women, directed profanities at her and forwarded offensive and degrading emails, causing her emotional and mental distress.

The lawsuit claims Pele made her concerns about Castagna known to her employer on Aug. 29, 2009, when he allegedly sexually assaulted Pele at work.

Pele has since been on medical leave since then and is receiving counselling, her lawsuit says.

Pele, who claims the CBSA is vicariously liable for the actions of Castagna, was hired in 2004 as a border officer.

She claims the CBSA was negligent in failing to use reasonable care in conducting an investigation of her complaints and to ensure the workplace was free from sexual harassment and assault.

She claims she suffered mental and emotional abuse.

None of the allegations have been proven in court.

The defendants are expected to file statements of defence at a later date.

Read more:

<http://www.vancouversun.com/Border+officer+sues+workplace+sexual+harassment/5366687/story.html>

Faith St. John

Communications Advisor

Canada Border Services Agency | Agence des services frontaliers du Canada

204 - 333 Dunsmuir St. | 204 - 333 rue Dunsmuir Vancouver V6B 5R4

604-666-5492

Policy on the Prevention and Resolution of Harassment in the Workplace

- or disciplinary measures will be taken as a result of their complaint.
- i. If the complaint is frivolous or in bad faith, respondents will be informed verbally whether corrective or disciplinary measures will be taken.
- j. Respondents will receive legal assistance if a harassment complaint, filed in accordance with this policy and determined at the departmental level to be unfounded, is pursued in the courts or at a tribunal.

Managers

- a. Managers are expected to lead by example and to act respectfully in dealings with employees and other persons working for the Public Service.
- b. They can expect to have access to learning opportunities on the prevention and resolution of harassment and in conflict resolution.
- c. They are expected to ensure that employees are aware of the policy and to remind them of its contents as deemed necessary.
- d. They are expected to ensure that employees have access to learning opportunities on the prevention and resolution of harassment in the workplace.
- e. They are expected to intervene promptly when they become aware of improper or offensive conduct and to involve the parties in resolving the problem.
- f. They are expected to address any alleged harassment of which they are aware, whether or not a complaint has been made. This applies to situations that involve employees as well as other persons working for the Public Service.
- g. They are expected to handle all harassment situations confidentially and to ensure that others act accordingly.
- h. They are expected to address the needs of the parties concerned and the working unit following a complaint with the assistance of a specialist as needed, in order to establish or re-establish harmonious working relationships.

Delegated managers

- a. Delegated managers are expected to be impartial in any complaint process in which they are involved.
- b. They can expect to have access to learning opportunities related to their role and responsibilities as delegated managers.
- c. They are expected to apply the established steps in the complaint process.
- d. They are expected to take the necessary action to ensure the confidentiality of complaints.
- e. They are expected to ensure that both complainants and respondents have access to support and advice during any resolution process associated with the complaint.
- f. They are expected to offer mediation and to ensure that the mediator or co-mediators meet the requirements of the Shared Mediators Program for Cases of Harassment or Conflict in the Workplace;
- g. They are expected to separate the complainant and respondent, hierarchically, physically, or both, for the duration of the complaint process, if they deem it necessary;
- h. They are expected to assign a mandate to the investigator(s) and ensure that persons conducting investigations are qualified in accordance with the Competencies Profile for Internal and External Harassment Investigators, that they are impartial, that they have no supervisory relationship with the parties, and that they are not in a position of conflict of interest.
- i. They are expected to ensure that corrective and/or disciplinary measures are taken,

where warranted.

- j. They are expected to ensure that no documents relating to the harassment complaint are placed in the personnel file of either party, other than a disciplinary letter in the file of the employee who is subject to a disciplinary measure.
- k. They are expected to ensure that parties are provided with the information to which they are entitled.

Investigators

- a. Investigators are expected to meet the requirements as outlined in the Competencies Profile for Internal and External Harassment Investigators.
- b. They are expected to apply the principles of procedural fairness.
- c. They are expected to abide by their assigned mandate.

Early problem resolution

The objective of early resolution is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without having to resort to the complaint process. Every effort should be made to resolve the problem early with open communication and in a co-operative manner. The use of problem resolution mechanisms such as coaching, counselling and facilitation can in many instances resolve the issue and prevent the situation from escalating to the point where filing a complaint is necessary. An allegation of harassment is serious. If a person working for the Public Service believes that he or she has been harassed, the following actions should be taken.

The person who feels offended by the actions of another person working for the Public Service is encouraged to make it known to that person as soon as possible in an attempt to resolve the problem.

If the problem is not resolved or if the offended person does not want to speak directly with the other, the offended person should meet with his or her supervisor, or with another manager, or seek advice from the person who is designated by their department/organization to provide information on harassment, in an attempt to find a solution and resolve the problem.

Management must make every effort to resolve the issue between the parties as quickly as possible, if necessary with the assistance of a resource person.

Complaint process

The complaint process applies to federal public service employees. Other persons working for the Public Service who believe they have been harassed may report the incident to their supervisor/manager, or, if necessary, to another appropriate manager who will address the situation and take appropriate action.

If early resolution is not successful or is not deemed appropriate, an employee may file a complaint with the delegated manager. All steps should be completed without undue delay, normally in six months or less. Departments must establish time frames appropriate to their particular organizations, in consultation with their union officials.

When dealing with complaints, requirements of the *Official Languages Act* must be taken into account.

The sharing of information related to the harassment complaint with the parties must comply with

the principles of privacy and access to information legislation.

Step 1 - Filing a complaint

The complainant submits a complaint in writing to the delegated manager, or to the next person in the hierarchy if the delegated manager is the subject of the complaint, within one year of the alleged harassment leading to the complaint. The complaint must include the nature of the allegations; the name of the respondent; the relationship of the respondent to the complainant (e.g., supervisor, colleague); the date and a description of the incident(s); and, if applicable, the names of witnesses. The information provided should be as precise and concise as possible.

Step 2 - Screening and acknowledgement of complaint

Upon receipt of the complaint, the delegated manager screens and acknowledges receipt of the complaint. The criteria used in the screening are that the complaint:

- must be filed within one year of the alleged harassment leading to the complaint, unless there are extenuating circumstances; and
- must include the information noted in Step 1.

If these criteria are met, the delegated manager informs the respondent that a complaint has been received and provides him/her with the particulars of the complaint in writing, including the allegations.

If these criteria are not met, the delegated manager informs the complainant in writing that he or she cannot accept the complaint. If appropriate, the delegated manager suggests other means of resolving the issue.

Step 3 - Review of the complaint

Once the complaint has been acknowledged, the delegated manager reviews the complaint and if necessary, seeks additional information to determine if the allegations are related to harassment.

If the delegated manager concludes that the complaint is not related to harassment, he or she informs the complainant and the respondent in writing. The delegated manager re-directs the complainant to the appropriate avenue of recourse or suggests other means of resolving the issue.

If the allegations are related to harassment, the delegated manager determines what efforts have been made to resolve the problem, identifies immediate avenues of resolution if any, and takes appropriate action.

Step 4 - Mediation

If the harassment complaint remains unresolved, the delegated manager must offer mediation. If the parties agree to mediation, the delegated manager obtains mediation services as noted above under "Delegated managers", section (f).

Step 5 - Investigation

If mediation has not resolved the complaint, or if mediation was not undertaken, the delegated manager launches an investigation and notifies all involved parties. The investigator must meet the requirements as noted previously under "Delegated managers", section (h). The investigator

must provide the delegated manager with a written report that includes his or her findings and conclusions.

If mediation is undertaken at any time during the investigation process, the investigation is suspended. It is resumed only if mediation is unsuccessful.

If the delegated manager is satisfied that he or she has all the facts and that the parties have been heard, he or she may decide not to undertake an investigation and to proceed to Step 6.

Step 6 - Decision

The delegated manager reviews all the relevant information and decides what action to take. He or she then informs the parties in writing of the outcome of the investigation and ensures that corrective and/or disciplinary measures are taken, if warranted.

Other recourse

Employees may wish to discuss grievance options with their bargaining agent.

If harassment is based on one of the grounds of discrimination prohibited under the *Canadian Human Rights Act*, employees have the right to file a complaint with the Canadian Human Rights Commission.

Assaults including sexual assault are covered by the *Criminal Code* and in such cases the police should be contacted.

If a complaint on the same issue is or has been dealt with through another avenue of recourse, the complaint process under this policy will not proceed further and the file will be closed.

Monitoring

Treasury Board of Canada Secretariat and departments/organizations will work together to monitor results in achieving the policy objective and statement.

References

Access to Information Act
Canadian Human Rights Act
Criminal Code
Official Languages Act
Privacy Act
Public Service Employment Act
Public Service Staff Relations Act

Enquiries

Enquiries relating to this policy should be referred to the responsible officer designated in departmental/organizational headquarters, who in turn may direct questions regarding interpretation to the Human Resources Branch of the Treasury Board of Canada Secretariat.

Appendix - Guide for determining what constitutes harassment

Some questions that can help assess whether the behaviour (act, comment or display) constitutes harassment:

- Is the behaviour unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?

It is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour is prohibited under the *Canadian Human Rights Act*. The prohibited grounds are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction.

The following are some examples, but not an exhaustive list, to clarify what is meant by "harassment".

What generally constitutes harassment	What may constitute harassment	What does not generally constitute harassment
<ul style="list-style-type: none"> ■ <i>Serious or repeated</i> rude, degrading, or offensive remarks, such as teasing about a person's physical characteristics or appearance, put-downs or insults. ■ Displaying sexist, racist or other offensive pictures, posters, or sending e-mails related to one of the eleven grounds prohibited under the <i>Canadian Human Rights Act</i>. 	<ul style="list-style-type: none"> ■ Criticizing an employee in public. 	<ul style="list-style-type: none"> ■ Allocating work. ■ Following-up on work absences. ■ Requiring performance to job standards. ■ Taking disciplinary measures. ■ A <i>single or isolated</i> incident such as an inappropriate remark or abrupt manner.
<ul style="list-style-type: none"> ■ <i>Repeatedly</i> singling out an employee for meaningless or dirty jobs that are not part of their normal duties. 	<ul style="list-style-type: none"> ■ Exclusion from group activities or assignments. 	<ul style="list-style-type: none"> ■ Exclusion of individuals for a particular job based on specific occupational requirements necessary to accomplish the safe and efficient performance of the job.
<ul style="list-style-type: none"> ■ Threats, intimidation or retaliation against an employee, including one who has expressed concerns about perceived unethical or illegal workplace behaviours. 	<ul style="list-style-type: none"> ■ Statements damaging to a person's reputation. 	<ul style="list-style-type: none"> ■ Measures taken against someone who is careless in his or her work, such as in the handling of secret documents.

<ul style="list-style-type: none"> ■ Unwelcome social invitations, with sexual overtones or flirting, with a subordinate. ■ Unwelcome sexual advances. 	<ul style="list-style-type: none"> ■ Making sexually suggestive remarks. ■ Physical contact such as touching or pinching. 	<ul style="list-style-type: none"> ■ A social relationship welcomed by both individuals. ■ Friendly gestures among co-workers such as a pat on the back.
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Sexual and physical assault are covered by the *Criminal Code*.



Policy on the Prevention and Resolution of Harassment in the Workplace

Preamble

As the employer of the federal Public Service, the Treasury Board is committed to providing a work environment where all persons working for the Public Service are treated with respect and dignity. Bargaining agents are also supportive of this and involved in initiatives to promote such an environment.

Harassment affects workplace and individual well-being and will not be tolerated. This policy aims to prevent harassment by promoting increased awareness, early problem resolution and the use of mediation. The application of this policy will help create a work environment where all are treated with respect and dignity. It will not only promote the well-being of all in the workplace, but it will reinforce those values of integrity and trust that are the foundation of a sound organization.

Dealing with harassment can be a complex matter. What one person may consider to be proper behaviour, another may believe to be harassment. Note that the proper exercise of one's authority or responsibility does not generally constitute harassment. The Appendix provides some examples for better understanding.

The *Canadian Human Rights Act* provides every person in the workplace the right to freedom from harassment based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction. These are referred to as prohibited grounds.

The Treasury Board policy goes beyond these requirements by addressing other types of workplace harassment such as harassment of a general nature not related to the grounds prohibited under the *Canadian Human Rights Act*, including rude, degrading or offensive remarks or e-mails, threats or intimidation.

The policy promotes the prevention of harassment and focuses on the prompt resolution of harassment. Whether the source of harassment comes from within the Public Service or from outside, any allegation of harassment is serious and should be taken seriously. Harassment needs to be addressed with sensitivity, promptness and discretion. Open communication and early intervention are essential in preventing and resolving harassment.

Effective date

The effective date of this policy is June 1, 2001.

Policy objective

The purpose of this policy is to foster a respectful workplace through the prevention and prompt resolution of harassment.

Policy statement

Harassment in the workplace is unacceptable and will not be tolerated. All persons working for the

Public Service, whether or not they are employees, should enjoy a harassment-free workplace.

Application

This policy applies to all departments and organizations of the Public Service listed in Schedule I, Part I of the *Public Service Staff Relations Act*.

The complaint process as defined in this policy applies to federal public service employees. Though other persons who work for the Public Service cannot access the complaint process described in the policy, managers are nevertheless expected to abide by the spirit of the policy and ensure that their harassment concerns are addressed.

The policy does not apply to complaints from the public. The responsibility for follow-up on such complaints lies with departments/organizations.

Definitions

Harassment (*harcèlement*) - is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

Complaint (*plainte*) - is a formal allegation of harassment submitted in writing to the delegated manager, and which is based on actions defined as *harassment*.

Delegated manager (*gestionnaire délégué*) - is a senior executive designated by the deputy head, accountable for the harassment complaint process.

Mediation (*médiation*) - is a voluntary process used to resolve conflict by having a neutral person help the disputing parties arrive at a mutually acceptable solution.

Policy requirements

- Deputy heads are responsible for fostering a work environment free of harassment.
- All employees must be informed of this policy.
- Learning opportunities related to the *Policy on the Prevention and Resolution of Harassment in the Workplace* must be made available to employees and managers/supervisors.
- Employees must be informed of the name or title and address of the delegated manager (s) in his or her department/organization.
- Early resolution should be used to resolve problems at the outset.
- Mediation must be offered before an investigation is initiated.
- The complaint process, including the investigation if necessary, should be completed without undue delay, normally in six months or less.
- Corrective action must be timely in all situations of harassment, whether it involves employees or other persons working for the Public Service.
- Harassment may result in corrective or disciplinary measures being taken, up to and including termination of employment. Disciplinary or corrective measures may also be taken against the following: any manager who is aware of a harassment situation and who fails to take corrective action; anyone who interferes with the resolution of a complaint by

threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.

- If a complaint of harassment is determined at the departmental level to be unfounded, and is pursued in the courts or at a tribunal, the respondent's department/organization will provide legal assistance to the respondent.
- Departments/organizations must meet the requirements of this policy.

Responsibility and authority

The ultimate responsibility and authority for applying this policy rests with the deputy head and his or her authorized representative(s).

Expectations

Employees

- a. Employees are expected to act towards other individuals professionally and respectfully.
- b. Employees who believe they have been treated in an improper and offensive manner are expected to communicate to the offending party, as soon as possible, directly or through a supervisor/manager, their disapproval or unease. They can get help or guidance from the supervisor, the person designated by the department/organization, or the union.
- c. They can expect to be informed of the Treasury Board policy.
- d. They can expect prompt action if they report an incident of harassment to their supervisor/manager or if necessary, to another appropriate manager.
- e. They can expect to be treated without fear of embarrassment or reprisal when dealing with a harassment situation or involved in the resolution of a complaint.
- f. They will be encouraged to participate in a problem resolution process before proceeding with the complaint process.

Complainants, respondents and witnesses

- a. Complainants, respondents and witnesses are expected to provide information as required in the steps noted below under "Complaint process".
- b. They are expected to co-operate in the complaint process if and when called upon to do so.
- c. They are expected to limit the discussion of the complaint to those who need to know.
- d. They can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.
- e. Complainants and respondents will receive information related to the complaint in writing, including allegations, as noted in the steps below, under "Complaint process", and in accordance with the principles of procedural fairness.
- f. Complainants and respondents may have with them, during meetings and interviews related to the resolution of the complaint, a person of their choice who has agreed to accompany them and who is not a party to the process.
- g. Complainants and respondents can expect to review a copy of the draft report. They will be informed in writing of the outcome of the investigation and will receive a copy of the final report.
- h. If the complaint is founded, complainants will be informed verbally whether corrective

Jody Hawley

REH129 Strategic Communication and Working Alliances
REH120 Rehabilitation and Disability Foundations

Jody Hawley has been providing vocational rehabilitation services for more than 30 years. Her experience includes the development of employment opportunities in government for people with disabilities, managing the rehabilitation services of a disability agency and delivering vocational services for insurance companies. In 1992, Dr. Hawley established her own vocational rehabilitation consulting business, which enabled her to design and deliver a number of innovative and successful programs. Her research, writings and presentations cover ethics, vocational interventions for psychological disabilities and the future of the vocational practitioner.

M 1ard, Alyson

From: Pieri, Stephanie

Sent: September 12, 2011 7:24 AM

To: Brant, Kevin

<http://www.canada.com/vancouversun/news/westcoastnews/story.html?id=70fd5180-b914-4394-8450-20b8116bbabc&k=42274>

Stephanie Pieri

Labour Relations Advisor/Conseillère en relations de travail

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Government of Canada/Gouvernement du Canada



Border officer files sex harassment lawsuit against CBSA, colleague

An officer with the Canada Border Services Agency is suing her employer and a work colleague for sexual harassment and mental abuse.

BY VANCOUVER SUN SEPTEMBER 8, 2011

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The lawsuit claims when Pele made her concerns about Castagna known to her employer, he sexually assaulted Pele at work on Aug. 29, 2009.

Pele has since been on medical leave and is receiving counselling, her lawsuit says.

Pele, who claims the CBSA is vicariously liable for the actions of Castagna, was hired in 2004 as a border officer.

She claims the CBSA was negligent in failing to use reasonable care in conducting an investigation of her complaints and to ensure the workplace was free from sexual harassment.

She claims she suffered mental and emotional abuse.

None of the allegations have been proven in court.

The defendants are expected to file statements of defence at a later date.

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border officer files sex harassment lawsuit against CBSA, colleague

BY NEAL HALL, VANCOUVER SUN SEPTEMBER 8, 2011

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Health Canada Santé Canada

Occupational Health Assessment Process (including Fitness To Work Evaluations)
CONSENT TO UNDERGO A FITNESS TO WORK EVALUATION

I, (name) _____, agree to undergo a Fitness To Work Evaluation (FTWE) which will be conducted by the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada. The purpose of the evaluation is to determine my fitness to work. The reasons I have been referred to WHPSP to undergo the Evaluation have been fully explained to me by _____, and provided to me in writing by him/her.

(Name/Department)

I understand and agree that my department will provide to the WHPSP medical personnel a detailed description of the nature of their concerns about my medical fitness to work and that I will receive a copy of this written referral before the medical assessment. I have read the Fitness To Work Evaluation information package. I understand that my department including Human Resources is restricted by the *Privacy Act* to release to the WHPSP physician only information directly relevant to my situation as described in the written referral and necessary to make the assessment.

I authorize WHPSP to provide my employing department with an interpretation of the Fitness To Work Evaluation which will contain a description of my abilities to perform the duties of my position including any functional limitations that may arise due to medical (physical and mental) conditions identified during the Evaluation. WHPSP will not disclose any clinical information to my employing department.

Information collected by WHPSP will be retained in my occupational health medical file which will be retained by WHPSP, Health Canada. Information collected by WHPSP will be merged with other information previously collected and retained on the WHPSP medical file. This medical file may be referenced by WHPSP medical personnel should I undergo another Occupational Health Assessment or Fitness To Work Evaluation in the future.

This information is collected by WHPSP for the purpose of administering the Treasury Board's Public Service Health Program. The information will be treated as personal information in accordance with the provisions of the *Access to Information Act* and the *Privacy Act*. The records will be held in Regional Information Banks PCE 701 (Occupational Health Medical Records), PCE 702 (Public Service Health Medical Advisory Committee) and/or PCE 703 (Health Unit Files) and I may request a copy from the WHPSP office or clinic in accordance with provisions of the *Privacy Act*.

I have read the information above or had it explained to me and I understand the nature of a Fitness To Work Evaluation and the uses to which the personal information collected by WHPSP may be put. I have had the opportunity to seek independent advice or the advice of my union. I declare that my consent has been given voluntarily. I understand that I may withdraw my consent at any time. Where I revoked my consent to undergo a Fitness To Work Evaluation, I authorize WHPSP to advise my employing department that I have done so.

Unless previously revoked by me, this consent to the evaluation and interpretation as specified expires on: (date) _____.

Signature: _____
 (Signature and print)

Date: _____

Witness: _____
 (Signature and print)

Revised June 2006

Canada



Health Canada Santé Canada

Occupational Health Assessment Process (including Fitness To Work Evaluations)

CONSENT TO RELEASE MEDICAL INFORMATION

(Confidential when completed. To be completed by worker and placed in a confidential, sealed envelope to be sent to WHPSP. Not to be seen by HR Manager unless the employee specifically requests help from HR in order to complete the form.)

I, (name) _____, authorize: (name of physician, health facility or health professional) _____

to discuss with and/or disclose the contents of my medical file to the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada for the purpose of providing an occupational health medical assessment including a Fitness To Work Evaluation (FTWE). I authorize the medical personnel of WHPSP to discuss/discard the contents of my medical file held by WHPSP to the above-named physician, health facility or health professional.

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I authorize WHPSP to place the information in my WHPSP occupational health medical file along with information that may be currently held there. I understand that this medical file may be referenced in future evaluations.

In the event that I am referred to WHPSP for another Occupational Health Assessment in another region, I agree that my entire occupational health medical file may be transferred from one WHPSP physician, medical officer or clinic to another in order to facilitate subsequent Fitness To Work Evaluations.

I declare that I have read the information above or had it explained to me and I understand the nature of the Evaluations and the uses to which the collected information may be put. I declare that my consent to the exchange of information specified above has been given voluntarily. I understand that I may withdraw my consent at any time.

Unless previously revoked by me, this consent to the release of information, its evaluation and interpretation as specified expires on: (date) _____.

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(Signature and print)

December 2005

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REASONS FOR PERFORMING A FITNESS TO WORK EVALUATION

A Fitness to Work Evaluation (FTWE) is a **special type** of Occupational Health Assessment. It is performed by the Workplace Health and Public Safety Programme (WHPSP) at the request of management when there is a concern that you may have a health problem which could impact on your ability to work.

FTWEs are performed in the following situations:

CHANGE IN WORKING CONDITIONS OF EXISTING JOB

When the existing working conditions have been significantly altered.

CHANGE IN HEALTH STATUS

When an employee develops health problems that may be aggravated by existing working conditions.

PERFORMANCE-INITIATED REVIEW

When health reasons are identified as the cause of failing job performance and a medical review has been suggested (job not yet at risk) or required (job at risk) by the employer.

CONTINUING IMPAIRMENT

When an employee remains absent from work for a prolonged period and must be reassessed to update disability status.

RETURN TO WORK

When an employee is returning to work after recovery from a serious illness or injury and the person's capability of performing the original job is not known.

When an employee has returned to work at a modified job and is still undergoing therapy, rehabilitation or both.

December 2005

Canada



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REASONS FOR PERFORMING AN OCCUPATIONAL HEALTH ASSESSMENT

An Occupational Health Assessment is routinely performed by the Workplace Health and Public Safety Programme (WHPSP) to assess whether you meet the medical requirements of your position.

Occupational Health Assessments are performed in the following situations:

PREPLACEMENT

When an employee has been offered a full or part time job subject to passing a relevant medical evaluation.

CHANGE IN WORKING CONDITIONS OF EXISTING JOB

When the existing working conditions have been significantly altered.

PERIODIC HEALTH ASSESSMENT

This assessment is based upon the nature of your job and the need to detect or prevent health changes that may affect the health and safety of you and others.

JOB TRANSFER

When an employee transfers to a position whose working conditions are significantly different than the previous position.

December 2005

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EMPLOYEE GUIDE FOR FITNESS TO WORK EVALUATIONS

Why Have I Been Referred to WHPSP?

Your employer has referred you to the Workplace Health and Public Safety Programme (WHPSP) for a Fitness to Work Evaluation (FTWE) to assess whether you meet the medical requirements of your position. Management is concerned that you may have a health problem which may impact on your ability to work. It is expected that your manager or human resources advisor will have reviewed with you the reasons for the assessment, and provided you with a copy of the FTWE request which was sent to WHPSP.

What is the Purpose of the FTWE?

The purpose of the FTWE is to determine your fitness to safely carry on with all of your duties as described in your Job Analysis, or your fitness for alternate employment. It is also to define any limitations caused by your illness or injury.

What is the Process of the FTWE?

Your human resources advisor will send a letter of referral to WHPSP, specifying the reasons for the request. A completed Job Analysis will be sent as well. Your department will notify you of your appointment.

You will be assessed by a WHPSP Occupational Health Medical Officer (physician). A complete history with a physical examination, limited to the pertinent areas, will be performed either by the Occupational Health Medical Officer (OHMO) or by one of the WHPSP designated physicians who will send his report to the OHMO.

Additional evaluation may include laboratory tests and an assessment by a psychologist or other consulting specialist.

The Occupational Health Medical Officer may contact your own personal physician or specialist, with your consent, to obtain additional medical information/opinions.

What Should I Do to Prepare for my Appointment?

We recommend that you advise your treating physician of the referral. Your doctor is welcome to contact us. If possible, bring your medical and pertinent medical reports/test results with you. Once you have been informed of the process and you have agreed to the FTWE, please fill out the *Consent to a Fitness to Work Evaluation* as well as the *Consent to Release Information* forms.

What Happens After I Have Been Seen at WHPSP?

The OHMO is a consultant. He/she may discuss treatment recommendations with you, but will not prescribe treatment. You remain under the care of your treating physician at all times. The OHMO may contact your physician (with your consent only) and/or the human resources advisor involved in your case, to gather any additional pertinent information.

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What Will WHPSP Tell my Employer?

Following your medical evaluation, the Occupational Health Medical Officer will tell your department in writing whether you meet the medical requirements of your position, as described in your job analysis. The OHMO may suggest certain restrictions concerning your ability to perform your job. Your department may then be able to adjust your duties to accommodate these limitations.

However, the final decision regarding your employability or any work modification rests with your employer. Examples of limitations include a gradual reintegration on a part-time basis, or avoidance of certain physical tasks such as heavy lifting, repetitive movement of an affected limb and overhead work. It may also be recommended that you be supplied with additional equipment at work.

Please note that at no time will anyone, including your employer, receive any confidential medical information unless you have given informed consent in writing or as required by law.

Will I Be Advised of WHPSP's Decision?

Yes. If the decision is not clear at the time of your assessment, WHPSP will notify you at a later date. You will receive copies of all letters sent to your department. Please contact your human resources advisor if you have additional questions. You may also discuss any outstanding issues with the OHMO at the time of your assessment.

How to reach us

Halifax	(902) 426-5023
St. John	(709) 772-5571
Moncton	(506) 851-7005
Charlottetown	(902) 566-7873
Quebec	(418) 648-7205
Montreal	(514) 283-2463
Ottawa	(613) 954-6541
Toronto	(416) 973-1178
Winnipeg	(204) 983-6330
Regina	(306) 780-6448
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Calgary	(403) 292-5525
Vancouver	(604) 666-7310
Victoria	(250) 363-3566
Head Office	(613) 957-7668

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Health Canada Santé Canada

Occupational Health Assessment Process (including Fitness To Work Evaluations)

CONSENT TO UNDERGO A FITNESS TO WORK EVALUATION

I, (name) _____, agree to undergo a Fitness To Work Evaluation (FTWE) which will be conducted by the medical personnel of the Workplace Health and Public Safety Programme (WHPSP), Health Canada. The purpose of the evaluation is to determine my fitness to work. The reasons I have been referred to WHPSP to undergo the Evaluation have been fully explained to me by _____, and provided to me in writing by him/her.
(Name/Department)

I understand and agree that my department will provide to the WHPSP medical personnel a detailed description of the nature of their concerns about my medical fitness to work and that I will receive a copy of this written referral before the medical assessment. I have read the Fitness To Work Evaluation information package. I understand that my department including Human Resources is restricted by the *Privacy Act* to release to the WHPSP physician only information directly relevant to my situation as described in the written referral and necessary to make the assessment.

I authorize WHPSP to provide my employing department with an interpretation of the Fitness To Work Evaluation which will contain a description of my abilities to perform the duties of my position including any functional limitations that may arise due to medical (physical and mental) conditions identified during the Evaluation. WHPSP will not disclose any clinical information to my employing department.

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Revised June 2006

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December 2005

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December 2005



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December 2005



EMPLOYEE GUIDE FOR FITNESS TO WORK EVALUATIONS

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What Should I Do to Prepare for my Appointment?

We recommend that you advise your treating physician of the referral. Your doctor is welcome to contact us. If possible, bring your medical and pertinent medical reports/test results with you. Once you have been informed of the process and you have agreed to the FTWE, please fill out the *Consent to a Fitness to Work Evaluation* as well as the *Consent to Release Information* forms.

What Happens After I Have Been Seen at WHPSP?

The OHMO is a consultant. He/she may discuss treatment recommendations with you, but will not prescribe treatment. You remain under the care of your treating physician at all times. The OHMO may contact your physician (with your consent only) and/or the human resources advisor involved in your case, to gather any additional pertinent information.

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What Will WHPSP Tell my Employer?

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Please note that at no time will anyone, including your employer, receive any confidential medical information unless you have given informed consent in writing or as required by law.

Will I Be Advised of WHPSP's Decision?

Yes. If the decision is not clear at the time of your assessment, WHPSP will notify you at a later date. You will receive copies of all letters sent to your department. Please contact your human resources advisor if you have additional questions. You may also discuss any outstanding issues with the OHMO at the time of your assessment.

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Vancouver	(604) 666-7310
Victoria	(250) 363-3566
Head Office	(613) 957-7668

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FITNESS TO WORK EVALUATION REFERRAL CHECKLIST

INFORMATION WHPSP REQUIRES:

A. LETTER FROM THE SUPERVISOR REQUESTING A FITNESS TO WORK EVALUATION

- ☐ Describe events leading to the referral
- ☐ Describe performance problems
- ☐ State the reason for suspecting any underlying health problem
- ☐ Describe adjustments, accommodations, alternate work offered so far
- ☐ Describe administrative or disciplinary actions taken

B. LETTER FROM HUMAN RESOURCES

- ☐ Attach a form HC3312E (Occupational Health Assessment Form), filling out the upper portion.
- ☐ Include a completed *Job Analysis Form*
- ☐ Identify point of contact for employee and WHPSP
- ☐ Describe important human resource issues
- ☐ Provide information regarding sick leave, vacation, years worked, options, accommodations, alternate work available
- ☐ Clearly state all questions to be answered

C. CONSENT FORMS

- ☐ Obtain a completed *Consent to a Fitness to Work Evaluation* form from the employee
- ☐ Obtain a completed *Consent to Release Information* form from the employee

D. ALWAYS INCLUDE AS MUCH INFORMATION AS POSSIBLE

Do not include any attempt to make a "diagnosis" on your part. Do not include hearsay nor verbal informants' stories. State only problems observed and/or noted in the workplace. State your concerns and the questions you want answered.

E. WANT TO DISCUSS THE CASE?

If you wish to discuss the case or explain further your letter of request, you should call the Occupational Health Medical Officer (OHMO) directly. You are encouraged to communicate with the OHMO as often as necessary.

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F. REPORTS

You will receive a copy of the employee's Fitness To Work Evaluation. This will often contain specific recommendations that the OHMO will discuss with you by telephone prior to writing to you. If you wish further explanation or clarification after receiving the letter, please contact the OHMO directly. No medical or confidential personal information will be given to you, rather only information with respect to the ability of the employee to do the job.

Since no medical information will be released, the assessment report may not fit your expectations based on what you see in the workplace. In such cases, you may be assured that all medical information obtained has been considered. If the assessment states that the employee meets the medical requirements, then the cause of the workplace issue has no medical basis.

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PROTOCOL FOR FITNESS TO WORK EVALUATIONS

INTRODUCTION

This protocol is intended to be a guide for physicians, nurses, managers, supervisors, human resource staff, and staff relations personnel. It is not meant to be exhaustive, but rather is intended as a guide to Fitness to Work Evaluations (FTWEs).

When assessing an employee's fitness to work, WHPSP considers the level of skill, physical and mental capacity, sensory acuity, etc. needed for effective performance of the work. An estimate of the employee's level of function is made by assessing the relevant body systems. Special attention is paid to those which are disordered and to those relevant to the employee's work.

DEFINITION OF FITNESS TO WORK EVALUATION

A FTWE is a medical assessment of an employee, usually with a specific job under specific working conditions in mind. It is designed to determine if the employee is medically fit to safely perform the critical tasks of the job under those working conditions. At the conclusion of the assessment, an estimate of the functional capacity of the individual for the specific job under consideration is communicated to the department. While routine pre-placement and periodic examinations contain fitness to work evaluation elements, these are not meant to be considered as FTWEs. FTWEs are non-scheduled examinations requested by management.

REASONS FOR DOING A FITNESS TO WORK EVALUATION

A FTWE is needed when:

1. The employee's condition may limit, reduce or prevent the employee from performing the job effectively (e.g. musculoskeletal conditions that limit mobility or manipulative ability).
2. The employee's condition is likely to make it unsafe to do the job (e.g. subject to unpredictable sudden unconsciousness in a hazardous situation).
3. The employee's condition is likely to make it unsafe both for him/her, co-workers, or the public (e.g. driving by someone who is subject to unpredictable sudden unconsciousness; food product inspection by an inspector with deficient colour vision).
4. The employee's medical condition might be made worse by the job (e.g. excessive physical exertion by an employee with a heart or lung disorder; an asthmatic exposed to allergens or irritants).

PROTOCOL FOR REFERRAL FOR A FITNESS TO WORK EVALUATION

From the very start of this process, it is important that the employee is well informed about the referral, the reasons for the referral, the possible outcomes, and the fact that it is voluntary (unless medical standards apply). It is advisable to give the employee a copy of the letter requesting the FTWE. If communications are kept above board at all times, the employee is more likely to cooperate and the outcome is more likely to be satisfactory to all parties. In any case, the employee has access to the file under the *Privacy Act* but it is better for good relationships if he/she does not have to use that route to obtain information.

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LETTER FROM THE SUPERVISOR TO WHPSP REQUESTING A FITNESS TO WORK EVALUATION

The letter should include the following information:

Describe Events Leading To The Referral

Ill employees may have problems in meeting deadlines, completing their work, making mistakes etc. It is important to recognize that something may be going wrong when an employee who has been doing well for years is now having problems. Something has changed to interfere with the employee's abilities.

State The Reason For Suspecting An Underlying Health Problem

Often this is as obvious as medical certificates or the employee simply tells you the diagnosis. Sometimes a doctor places restrictions on the employee and you need clarification.

Describe Adjustments, Accommodations, Alternate Work Offered So Far

Describe what has been tried up to this point. What alternate work has the employee been doing or is being considered? What tasks is the employee unable to perform? How has accommodation been accomplished? How has this affected the employee, co-workers, the unit's productivity, morale, etc?

Describe Administrative Or Disciplinary Actions Taken

Describe all actions taken when poor performance or behaviour has been a problem. It is important for us to know these details. State when problems began, when the interventions began, and the outcomes.

LETTER FROM HUMAN RESOURCES

Complete the upper portion of the HC 3312E (Occupational Health Assessment Form)

This is tombstone data, important because it has all the necessary information to identify the employee and the department properly and it has a tear-off sheet which is sent back to the department when the assessment is complete. This is accompanied by a letter to the department with a description of the outcome.

Job Analysis Form

In every case, complete a *Job Analysis Form*, found in the *Job Analysis Guidelines*, available from WHPSP, Health Canada. The job analysis identifies specific job functions and environmental factors so that a specific focused assessment can be done. It is different from the job description and defines tasks and conditions in contrast to the job description which is used to determine wages and classification. The job analysis details the mental and physical requirements of the job tasks as well as the working conditions, particular risks or inherent stresses in the work.

When doing a job analysis it is important to identify the Bona Fide Occupational Requirements (BFORs) in the covering letter. These are the essential or critical job tasks. They are the tasks which the employee must be able to perform to be able to do the job. In many occupations we are aware of the critical tasks. However there can be critical tasks we do not know about and many occupations do not have critical tasks defined well. Often whether or not accommodation is possible depends on the critical tasks. A BFOR has several criteria. The Canadian Human Rights Commission or Justice Canada can be consulted for additional information.

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Point of contact for employee and WHPSP

There is some variation as to the point of contact. Most of the time it is Human Resource staff so that Human Resources and Staff Relations are kept well informed as the case progresses.

Describe Important Human Resource Issues

These issues include grievances, harassment charges, Human Rights charges, legal action, compensation problems and probably a few more. It is very difficult for WHPSP to assess the situation well when we have not been told about harassment which has been ongoing for some time. Sexual harassment is a very significant issue when it comes to assessing mental health and fitness and making recommendations.

Provide Information Regarding Sick Leave, Vacation, Years Worked, Options, Accommodations Available, Alternate Work Available

Whether or not an employee has sick leave (or is on leave and what kind) is important to know about in suggesting medical management. It is also important to know about leave and vacation which may be available, including advancing sick leave. There may be other options open to the employee if he/she cannot return to work e.g. possible surplus status, "buy-out", and other options (relocation, modified work, alternate work etc). These latter need to be looked at seriously. If the manager simply states "no accommodations, no alternate work available" we may not know if this possibility has been thoroughly explored.

Clearly State All Questions To Be Answered

Be very clear and direct with these questions. Simply stating that you want a fitness for work evaluation or that you want to "finalize" the case tells us very little. You might ask questions such as "How long will this person be off work?" "When this person returns what will the limitations likely be?" "Is this person fit to work as a firefighter?" "Are these limitations reasonable?" "What is the likelihood of this person ever returning to work?"

REPORT BY WHPSP TO EMPLOYER

The functional capacity of the employee is estimated and communicated to the department. The estimate is usually based on basic medical information e.g. a medical history, physical examination and medical tests performed either by WHPSP staff alone or supplemented by other health care professionals as required.

The response is variable and often during the management of a case communication and adjustments are ongoing as circumstances change. Generally these can be:

1. Meets medical requirements

This means that the employee meets the medical requirements of the job under specific working conditions, that is the individual is capable of meeting the physical and mental demands of the job as described in the Job Analysis Guidelines.

2. Does not meet medical requirements

This means that the employee does not meet the medical standards which have been determined by Health Canada on the advice of the department. Health Canada has not set the requirements in isolation from the department. If the department has stated that the employee requires good colour vision, HC has decided what test to use to assess colour vision.

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When possible, the absolute medical requirements have been defined as occupational medical requirements and have been based on Bona Fide Occupational Requirements which have been defined by the department. If an employee does not meet these requirements, WHPSP states that he/she "does not meet medical requirements" of the job.

There are medical requirements which are relative. If the employee has a medical condition which "may" impair his/her function, the assessing physician must assess the degree to which the medical condition may adversely affect function.

3. Medically capable of alternate work

Sometimes the medical condition from which the employee suffers adversely affects that person's abilities such that he/she cannot perform the duties of his/her regular job safely. As a result the employee has to be considered for an alternate position and/or alternate location. Sometimes the medical assessment determines that the employee can perform the essential tasks of his/her occupation but not at his/her usual location. A second outcome is that the employee is not capable of performing his/her usual occupation, regardless of location.

4. Limitations and Work Accommodation

The employee's condition is such that he/she has certain functional limitations. When this is the case, there may be a need to modify the job in order to accommodate the limitations. WHPSP will list the specific tasks and limitations that are possible or probable. We will indicate whether or not the limitations are considered permanent or temporary and, if temporary, how long. Two aspects of the job are usually involved; place and time.

Workplace modifications may include mechanized means for lifting, a different type of chair or stool, change in bench height, or having other employees perform some tasks etc. More sophisticated aids or adaptations may be required such as mobile stairs replacing ladders, building wheelchair ramps etc.

Certain time features of the job may need adjustment, for example, more flexible working hours, more frequent rest pauses, alterations to shift work or changes to overtime being worked.

5. Time, Duration, Follow-up

The medical conditions and resulting impairments may be temporary, of unknown duration or permanent.

If the outcome is considered to be temporary an attempt is made to predict when the employee should be reviewed again. The time period can be anywhere from days to months. If the duration is unknown, such as in psychiatric cases, follow-up by WHPSP will continue as long as it seems reasonable that the employee will return to work in the foreseeable future. If return to work seems more and more unlikely, an attempt is made to estimate the probability of return to work and follow-up may be left up to the department. Every attempt is made to decide whether or not the employee will ever return to work. Rarely is it possible to state that the employee can never return to work. For example the probability of returning to work for back pain cases eligible for workers' compensation benefits depends on the time away from work. Less than 2% will return to work if they have been away for two years or more. Until similar research is done on other types of cases (psychiatric, medical, disability insurance, chronic pain etc.) we can only give our best approximation. In these cases we have to have a high degree of certainty regarding the estimate since the decisions may very well come before the courts. We have to be able to defend these decisions.

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WORKPLACE HEALTH AND PUBLIC SAFETY PROGRAMME JOB ANALYSIS GUIDELINES

Job Analysis is the process by which information relative to a specific job, position, or occupation is collected, analyzed and interpreted. The purpose of Job Analysis is to identify specific job requirements and work environment factors that could affect job performance. It is used in assessing the worker's ability as well as to identify reasonable accommodations necessary to allow effective job performance. Employers must provide accommodations to ensure that qualified people with disabilities have the opportunity to participate in business-related activities, access the workplace and perform essential job functions.

Functional job requirements include such factors as:

- methods, techniques, tools or equipment to complete a task;
- physical or mental requirements such as those listed on the Job Analysis form;
- degree of physical effort or complexity of mental requirements;
- duration of time required to perform a task;
- frequency with which a task is performed.

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Health Canada Santé Canada

WORKPLACE HEALTH AND PUBLIC SAFETY PROGRAMME JOB ANALYSIS FORM

I. Job Title: _____

Dept.: _____

II. Degree of Strenuousness (Circle): **S** **L** **M** **H** **V** (see following section for letter descriptions)

III. Physical Factors ()	Not Present	O	F	C	Describe all checked with F or C:
1. Standing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Walking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Sitting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Lifting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Carrying (wt _____)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Pushing (wt _____)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Pulling (wt _____)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Climbing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9. Balancing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
10. Stooping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
11. Kneeling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
12. Crouching	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
13. Crawling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
14. Reaching	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
15. Handling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
16. Filing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
17. Fingering	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
18. Typing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
19. Xeroxing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
20. Feeling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
21. Talking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
22. Hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
23. Tasting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
24. Smelling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
25. Near Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
26. Far Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
27. Depth Perception	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

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28. Visual Accommodation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
29. Colour Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
30. Field of Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
31. Driving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
32. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

IV. Mental Factors ()	Not Present	O	F	C	Describe all checked with F or C:
1. Continuous alertness or concentration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Problem solving, decision, making, organizing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Retention of large amounts of information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Negotiating, mediating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

V. Working Conditions ()	Not Present	O	F	C	Describe all checked with F or C:
1. Exposure to weather	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Extreme heat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Extreme cold	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Wet/humid	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Noise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Vibrations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Atmospheric conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Dust, vapors, fumes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

VI. Potential Hazards ()	Not Present	O	F	C	Describe all checked with F or C:
1. Moving mechanical parts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Electric shock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. High, exposed places	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Explosives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Radiation, ionizing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Radiation, non-ionizing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Burns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Insecticides/pesticides	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9. Infectious exposure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
10. Patient contact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
11. Sharp objects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

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12. Waste handling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
13. Computer use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
14. Repetitive movements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
15. Sustained postures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
16. Physical violence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
17. Chemicals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
18. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

VII. Schedule demands ()	Not Present	O	F	C	Describe all checked with F or C:
1. Prolonged work days, overtime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Shift work, rotating or otherwise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. On call	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Travel required	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Pace of work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Monotony	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Deadlines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

VIII. Social / emotional () demands	Not Present	O	F	C	Describe all checked with F or C:
1. Must be able to work in isolation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Works closely with public or others (e.g., inmates)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Interacts with others who may be angry, hostile, unreasonable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Works with individuals who may be in pain or distress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Works with crisis or emergency situations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Job carries a threat of physical assault	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Job may require the use of deadly force	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Supervise other individuals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

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IX. Protective equipment/clothing required (List all that apply) :

X. Operates motor vehicles:

Yes ☐

No ☐

Specify the type of vehicle in question: _____

XI. Carries a personal weapon:

Yes ☐

No ☐

XII. Comments:

Completed by: _____

Date: _____

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007464

In completing the Job Analysis Form:

SECTIONS I and II:

1. Indicate the job title and circle whether this job is:

S =	Sedentary	=	Primarily sitting/lifting 10 lbs maximum
L =	Light	=	Lifting 20 lbs maximum with frequent lifting/carrying up to 10 lbs
M =	Medium	=	Lifting 50 lbs maximum with frequent lifting/carrying up to 25 lbs
H =	Heavy	=	Lifting 100 lbs maximum with frequent lifting/carrying up to 50 lbs
V =	Very Heavy	=	Lifting objects over 100 lbs with frequent lifting/carrying more than 50 lbs

SECTION III:

2. Check all physical factors that **are not present** as essential job requirements.

3. Check all factors that **are present** as essential job requirements and check whether the factor is performed:

O =	Occasionally	=	0 - 33% of the work shift
F =	Frequently	=	34 - 66% of the work shift
C =	Constantly	=	67 - 100% of the work shift

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4. Describe all factors checked **frequently or constantly present**, e.g., #1 stands to maintain filing system, or #4 lifts patients with assistance from co-workers (weight: 50 - 200 lbs). Include a description of:

- how functions are performed (methods, tools, equipments, techniques etc.);
- duration of time involved or required to perform function;
- availability of assistance.

SECTION IV through VIII:

5. Check and complete these sections as described for Section III.

SECTION IX:

6. List all required protective equipment/clothing for job.

SECTION XII:

7. Add any comments necessary to clarify or describe job requirements.
8. Print name and date of completion.

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PHYSICAL ACTIVITIES

Strength:

- Lifting: Raising or lowering an object from one level to another (includes upward pulling).
- Carrying: Transporting an object, usually holding it in the hands or arms or on the shoulder.
- Pushing: Exerting force upon an object so that the object moves away from the force (includes slapping, striking, kicking and treadle actions).
- Pulling: Exerting force upon an object so that the object moves toward the force (includes jerking).

Climbing and/or

Balancing:

For climbing, the emphasis is placed upon body agility; for balancing, it is placed upon body equilibrium.

- Climbing: Ascending or descending ladders, stairs, scaffolding, ramps, poles, ropes and the like, using the feet and legs and/or hands and arms.
- Balancing: Maintaining body equilibrium to prevent falling when walking, standing, crouching or running on narrow, slippery or erratically moving surfaces; or maintaining body equilibrium when performing gymnastic feats.

Body Dexterity:

The skill and ease in using body members.

- Stooping: Bending the body downward and forward by bending the spine at the waist.
- Kneeling: Bending the legs at the knees to come to rest on the knee or knees.
- Crouching: Bending the body downward and forward by bending the legs and spine.
- Crawling: Moving about on the hands and knees or hands and feet.

Reaching, Handling,

Fingering and/or Feeling: These activities involve the use of one or both the upper extremities.

Reaching Above Shoulder:

Extending the hands and arms in any direction above the shoulder.

Reaching Below Shoulder:

Extending the hands and arms in any direction below the shoulder.

Handling:

Seizing, holding, grasping, turning or otherwise working with the hand or hands (fingering not involved).

Fingering:

Picking, pinching or otherwise working primarily with the fingers (rather than with the whole hand or arm as in handling).

Feeling:

Perceiving such attributes of objects and materials as size, shape, temperature or texture, by means of receptors in the skin, particularly those of the finger-tips.

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Talking, Seeing & Hearing:

- Talking: Expressing or exchanging ideas by means of the spoken word. Talking is important for those activities in which the individual must impart oral information to clients or the public, and in those activities in which the individual must convey detailed or important instructions to other employees accurately, loudly or quickly.
- Hearing: Perceiving the nature of sounds by the ear. Hearing is important for those activities which require the ability to receive detailed information through oral communication, or to make fine discriminations by sound.
- Seeing: Obtaining impressions through the eyes of the shape, size, distance, motion, colour or other characteristics of object. For CCDO purposes, Normal Vision is assumed. An occupation is rated for PA: 7 - (Seeing) only when there is a significant requirement for one or more of the following component factors:
- Acuity, Far: Clarity of vision at 20 feet or more.
 - Acuity, Near: Clarity of vision at 20 inches or less.
 - Depth Perception: Three-dimensional vision. The ability to judge distance and space relationships so as to see objects where and as they actually are.
 - Accommodation: Adjustment of the lens of the eye to bring an object into focus. This component factor is especially important when doing near-point work at varying distance from the eye.
 - Colour Vision: The ability to identify and distinguish colours.
 - Field of Vision: The area that can be seen up and down, or to the right or left, while the eyes are fixed on a given point.

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Powers

Powers

- 226.** (1) An adjudicator may, in relation to any matter referred to adjudication,
- (a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner as a superior court of record;
 - (b) order that a hearing or a pre-hearing conference be conducted using a means of telecommunication that permits the parties and the adjudicator to communicate with each other simultaneously;
 - (c) administer oaths and solemn affirmations;
 - (d) accept any evidence, whether admissible in a court of law or not;
 - (e) compel, at any stage of a proceeding, any person to produce the documents and things that may be relevant;
 - (f) subject to any limitations that the Governor in Council may establish in the interests of defence or security, enter any premises of the employer where work is being or has been done by employees, inspect and view any work, material, machinery, appliance or article in the premises and require any person in the premises to answer all questions relating to the matter being adjudicated;
 - (g) interpret and apply the Canadian Human Rights Act and any other Act of Parliament relating to employment matters, other than the provisions of the Canadian Human Rights Act related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;
 - (h) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the Canadian Human Rights Act;
 - (i) award interest in the case of grievances involving termination, demotion, suspension or financial penalty at a rate and for a period that the adjudicator considers appropriate; and
 - (j) summarily dismiss grievances that in the opinion of the adjudicator are frivolous or vexatious.



Department of Justice
Canada

Ministère de la Justice
Canada

Canada

Department of Justice

Public Service Labour Relations Act (S.C. 2003, c. 22, s. 2)

Act current to 2012-09-04 and last amended on 2005-12-31. [Previous Versions](#)

Notes : • See coming into force provision and notes, where applicable.
• Shaded provisions are not in force. [Help](#)

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[Public Service Labour Relations Act Separate Agency Designation Order \(SOR/2005-59\)](#)

[Public Service Labour Relations Board Regulations \(SOR/2005-79\)](#)

[Safety or Security Positions Bargaining Direction \(C.R.C., c. 1354\)](#)

Date Modified: 2012-09-18

****Article 18**

Grievance Procedure

18.01 In cases of alleged misinterpretation or misapplication arising out of Agreements concluded by the National Joint Council of the Public Service on items which may be included in a Collective Agreement and which the parties to this Agreement have endorsed, the grievance procedure will be in accordance with Section 15 of the NJC by-laws.

Individual Grievances

18.02 Subject to and as provided in section 208 of the *Public Service Labour Relations Act*, an employee may present an individual grievance to the Employer if he or she feels aggrieved:

- a. by the interpretation or application, in respect of the employee, of:
 - i. a provision of a statute or regulation, or of a direction or other instrument made or issued by the Employer, that deals with terms and conditions of employment;
 - or
 - ii. a provision of the collective agreement or an arbitral award;
- or
- b. as a result of any occurrence or matter affecting his or her terms and conditions of employment.

Group Grievances

18.03 Subject to and as provided in section 215 of the *Public Service Labour Relations Act*, the Alliance may present a group grievance to the Employer on behalf of employees in the bargaining unit who feel aggrieved by the interpretation or application, common in respect of those employees, of a provision of the collective agreement or an arbitral award.

- a. In order to present a group grievance, the Alliance must first obtain the written consent of each of the employees concerned.
- b. A group grievance shall not be deemed to be invalid by reason only of the fact that the consent is not in accordance with Form 19.
- c. A group grievance must relate to employees in a single portion of the Federal Public Administration.

Policy Grievances

18.04 Subject to and as provided in section 220 of the *Public Service Labour Relations Act*, the Alliance or the Employer may present a policy grievance in respect of the interpretation or application of the collective agreement or of an arbitral award.

- a. A policy grievance may be presented by the Alliance only at the final level of the grievance procedure, to an authorized representative of the Employer. The Employer shall inform the Alliance of the name, title and address of this representative.
- b. The grievance procedure for a policy grievance by the Employer shall also be composed of a single level, with the grievance presented to an authorized representative of the Alliance. The Alliance shall inform the Employer of the name, title and address of this representative.

Grievance Procedure

18.05 For the purposes of this Article, a grievor is an employee or, in the case of a group or policy grievance, the Alliance.

18.06 No person shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause a grievor to abandon a grievance or refrain from exercising the right to present a grievance, as provided in this Collective Agreement.

18.07 The parties recognize the value of informal discussion between employees and their supervisors and between the Alliance and the employer to the end that problems might be resolved without recourse to a formal grievance. When notice is given that an employee or the Alliance, within the time limits prescribed in clause 18.15, wishes to take advantage of this clause, it is agreed that the period between the initial discussion and the final response shall not count as elapsed time for the purpose of grievance time limits.

18.08 A grievor wishing to present a grievance at any prescribed level in the grievance procedure, shall transmit this grievance to the employee's immediate supervisor or local officer-in-charge who shall forthwith:

- a. forward the grievance to the representative of the Employer authorized to deal with grievances at the appropriate level,
and
- b. provide the grievor with a receipt stating the date on which the grievance was received.

18.09 A grievance shall not be deemed to be invalid by reason only of the fact that it is not in accordance with the form supplied by the Employer.

18.10 Subject to and as provided for in the *Public Service Labour Relations Act*, a grievor who feels treated unjustly or aggrieved by an action or lack of action by the Employer in matters other than those arising from the classification process is entitled to present a grievance in the manner prescribed in clause 18.08, except that:

- a. where there is another administrative procedure provided by or under any Act of Parliament to deal with the grievor's specific complaint such procedure must be followed,
and
- b. where the grievance relates to the interpretation or application of this Collective Agreement or an Arbitral Award, an employee is not entitled to present the grievance unless he has the approval of and is represented by the Alliance.

18.11 There shall be no more than a maximum of four (4) levels in the grievance procedure. These levels shall be as follows:

- a. Level 1 - first level of management;
- b. Levels 2 and 3 in departments or agencies where such a levels are established -
intermediate level(s);
- c. Final Level - Chief Executive or Deputy Head or an authorized representative.

Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.

No employer representative may hear the same grievance at more than one level in the grievance procedure.

18.12 The Employer shall designate a representative at each level in the grievance procedure and shall inform each employee to whom the procedure applies of the name or title of the person so designated together with the name or title and address of the immediate supervisor or local officer-in-charge to whom a grievance is to be presented.

18.13 This information shall be communicated to employees by means of notices posted by the Employer in places where such notices are most likely to come to the attention of the employees to whom the grievance procedure applies, or otherwise as determined by agreement between the Employer and the Alliance.

18.14 An employee may be assisted and/or represented by the Alliance when presenting a grievance at any level. The Alliance shall have the right to consult with the Employer with respect to a grievance at each or any level of the grievance procedure.

18.15 A grievor may present a grievance to the first level of the procedure in the manner prescribed in clause 18.08, not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance. The Employer may present a policy grievance in the manner prescribed in clause 18.04 not later than the twenty-fifth (25th) day after the date on which the Employer is notified orally or in writing or on which the Employer first becomes aware of the action or circumstances giving rise to the policy grievance.

18.16 A grievor may present a grievance at each succeeding level in the grievance procedure beyond the first level either:

- a. where the decision or settlement is not satisfactory to the grievor, within ten (10) days after that decision or settlement has been conveyed in writing to the grievor by the Employer, or
- b. where the Employer has not conveyed a decision to the grievor within the time prescribed in clause 18.17, within fifteen (15) days after presentation by the grievor of the grievance at the previous level.

18.17 The Employer shall normally reply to a grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented, and within twenty (20) days where the grievance is presented at the final level except in the case of a policy grievance, to which the Employer shall normally respond within thirty (30) days. The Alliance shall normally reply to a policy grievance presented by the Employer within thirty (30) days.

18.18 Where an employee has been represented by the Alliance in the presentation of the employee's grievance, the Employer will provide the appropriate representative of the Alliance with a copy of the Employer's decision at each level of the grievance procedure at the same time that the Employer's decision is conveyed to the employee.

18.19 The decision given by the Employer at the Final Level in the grievance procedure shall be final and binding upon the employee unless the grievance is a class of grievance that may be referred to adjudication.

18.20 In determining the time within which any action is to be taken as prescribed in this procedure, Saturdays, Sundays and designated paid holidays shall be excluded.

18.21 Where the provisions of clause 18.08 cannot be complied with and it is necessary to present a grievance by mail, the grievance shall be deemed to have been presented on the day on which it is postmarked and it shall be deemed to have been received by the Employer on the day it is delivered to the appropriate office of the department or agency concerned. Similarly, the Employer shall be deemed to have delivered a reply at any level on the date on which the letter containing the reply is postmarked, but the time limit within which the grievor may present the grievance at the next higher level shall be calculated from the date on which the Employer's reply was delivered to the address shown on the grievance form.

18.22 The time limits stipulated in this procedure may be extended by mutual agreement between the Employer and the grievor and, where appropriate the Alliance representative.

18.23 Where it appears that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels except the final level may be eliminated by agreement of the Employer and the grievor, and, where applicable, the Alliance.

18.24 Where the Employer demotes or terminates an employee for cause pursuant to paragraph 12(1)(c), (d) or (e) of the *Financial Administration Act*, the grievance procedure set forth in this Agreement shall apply except that the grievance shall be presented at the final level only.

18.25 A grievor may by written notice to the immediate supervisor or officer-in-charge abandon a grievance.

18.26 Any grievor who fails to present a grievance to the next higher level within the prescribed time limits shall be deemed to have abandoned the grievance unless, due to circumstances beyond the grievor's control, the grievor was unable to comply with the prescribed time limits.

18.27 Where a grievance has been presented up to and including the final level in the grievance procedure with respect to:

- a. the interpretation or application of a provision of this Collective Agreement or related Arbitral Award,
or
- b. termination of employment or demotion pursuant to paragraph 12(1)(c), (d) or (e) of the *Financial Administration Act*,
or
- c. disciplinary action resulting in suspension or financial penalty,

and the grievance has not been dealt with to the grievor's satisfaction, it may be referred to adjudication in accordance with the provisions of the *Public Service Labour Relations Act* and *Regulations*.

18.28 Where a grievance that may be presented by an employee to adjudication is a grievance relating to the interpretation or application in respect of the employee of a provision of this Agreement or an Arbitral Award, the employee is not entitled to refer the grievance to adjudication unless the Alliance signifies:

- a. its approval of the reference of the grievance to adjudication,
and
- b. its willingness to represent the employee in the adjudication proceedings.

Expedited Adjudication

18.29 The parties agree that any adjudicable grievance may be referred to the following expedited adjudication process:

- a. At the request of either party, a grievance that has been referred to adjudication may be dealt with through Expedited Adjudication with the consent of both parties.
- b. When the parties agree that a particular grievance will proceed through Expedited Adjudication, the Alliance will submit to the PSLRB the consent form signed by the grievor or the bargaining agent.
- c. The parties may proceed with or without an Agreed Statement of Facts. When the parties arrive at an Agreed Statement of Facts it will be submitted to the PSLRB or to the Adjudicator at the hearing.
- d. No witnesses will testify.
- e. The Adjudicator will be appointed by the PSLRB from among its members who have had at least three (3) years experience as a member of the Board.
- f. Each Expedited Adjudication session will take place in Ottawa, unless the parties and the PSLRB agree otherwise. The cases will be scheduled jointly by the parties and the PSLRB, and will appear on the PSLRB schedule.
- g. The Adjudicator will make an oral determination at the hearing, which will be recorded and initialled by the representatives of the parties. This will be confirmed in a written determination to be issued by the Adjudicator within five (5) days of the hearing. The parties may, at the request of the Adjudicator, vary the above conditions in a particular case.
- h. The Adjudicator's determination will be final and binding on all the parties, but will not constitute a precedent. The parties agree not to refer the determination to the Federal Court.

Article 19

No Discrimination

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Alliance, marital status or a conviction for which a pardon has been granted.

19.02

- a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.
- b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

19.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with discrimination. The selection of the mediator will be by mutual agreement.

19.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

Article 20

Sexual Harassment

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from sexual harassment, and agree that sexual harassment will not be tolerated in the workplace.

20.02

- a. Any level in the grievance procedure shall be waived if a person hearing the grievance is the subject of the complaint.
- b. If, by reason of paragraph (a), a level in the grievance procedure is waived, no other level shall be waived except by mutual agreement.

20.03 By mutual agreement, the parties may use a mediator in an attempt to settle a grievance dealing with sexual harassment. The selection of the mediator will be by mutual agreement.

20.04 Upon request by the complainant(s) and/or respondent(s), an official copy of the investigation report shall be provided to them by the Employer, subject to the *Access to Information Act* and *Privacy Act*.

Reference to Adjudication

Reference to adjudication

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

- (a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;
- (b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;
- (c) in the case of an employee in the core public administration,
 - (i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or
 - (ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or
- (d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

Application of paragraph (1)(a)

(2) Before referring an individual grievance related to matters referred to in paragraph (1)(a), the employee must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings.

Designation

(3) The Governor in Council may, by order, designate any separate agency for the purposes of paragraph (1)(d).

Notice to Canadian Human Rights Commission

210. (1) When an individual grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the Canadian Human Rights Act, that party must, in accordance with the regulations, give notice of the issue to the Canadian Human Rights Commission.

North America ~ Canada ~ British Columbia ~ White Rock ~ Visions For Rehabilitation Ltd



Visions For Rehabilitation Ltd

1480 Foster St Suite 52
 White Rock, BC V4B 3X7, Canada

Website: Information not found

Phone: (604) 538-0220

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Visions For Rehabilitation Ltd is a private company categorized under Manpower Training and located in White Rock, BC, Canada. Register for free to see additional information such as annual revenue and employment figures. Companies like Visions For Rehabilitation Ltd usually offer: Greenleaf Job Training Services, Job Training Services, Jobs And Training Services.

Visions For Rehabilitation Ltd Business Information

Location Type	Single Location
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Employees (Estimated)	1
SIC Code	View Details
NAICS Code	624310, Vocational Rehabilitation Services
Products, Services and Brands	Information not found
State of Incorporation	Information not found
Years in Business	18

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Jody Hawley has been providing vocational rehabilitation services for more than 30 years. Her experience includes the development of employment opportunities in government for people with disabilities, managing the rehabilitation services of a disability agency and delivering vocational services for insurance companies. In 1992, Dr. Hawley established her own vocational rehabilitation consulting business, which enabled her to design and deliver a number of innovative and successful programs. Her research, writings and presentations cover ethics, vocational interventions for psychological disabilities and the future of the vocational practitioner.

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Date Modified: 2010-02-17



Directive on Claims and Ex Gratia Payments

1. Effective date

1.1 This directive takes effect on October 1, 2009.

1.2 It replaces the *Policy on Claims and Ex Gratia Payment* (dated June 1, 1998).

2. Application

2.1 This directive applies to departments as defined in section 2 of the *Financial Administration Act*.

2.2 Those portions of sections of this directive that provide for the Comptroller General to monitor compliance with this directive within departments and/or request departments take corrective action, do not apply with respect to the Office of the Auditor General, the Office of the Privacy Commissioner, the Office of the Information Commissioner, the Office of the Chief Electoral Officer, the Office of the Commissioner of Lobbying, the Office of the Commissioner of Official Languages and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this directive within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments that address the management of compliance.

2.3 This directive applies to *ex gratia* payments.

2.4 This directive should apply only when there is no statutory, regulatory or policy vehicle to make the payment.

2.5 This directive does not apply to claims between departments. Such claims are dealt with on the basis of mutual forbearance.

2.6 This directive does not apply to claims between departments and Crown corporations. Such claims are resolved by negotiated settlement or, when negotiations fail, are referred to the Deputy Attorney General of Canada.

3. Context

3.1 The purpose of this directive is to ensure the efficient and effective resolution of claims by and against Her Majesty in Right of Canada (the Crown) arising from government operations. Claims by or against the Crown may arise even when parties involved in the conduct of government business have been acting in good faith. This directive supports the objectives of the *Policy on Internal Control* by outlining the roles and responsibilities of chief financial officers, managers (including those with delegated authorities to make payments), and departmental security officers in processing claims and ex-gratia payments. This is to put in place a consistent approach which respects government financial and legal authorities and obligations. Claims may include requests for compensation to cover losses, expenditures or damages sustained by the Crown or a claimant, including requests or suggestions that the Crown make an *ex gratia* payment.

When the requirements of this directive are met, deputy heads have the authority to:

- Accept amounts in settlement of claims by the Crown;
- Recover from servants any amounts servants owe to the Crown;
- Pay amounts in settlement of claims against the Crown; and
- Make ex gratia payments.

3.2 This directive is issued pursuant to section 7 of the *Financial Administration Act*, and the *Ex gratia Payments Order, 1991* included as Appendix B.

3.3 The spending and certification authorities of this directive may be exercised by an official designated by the deputy head except that only the deputy head may approve *ex gratia* payments exceeding \$2,000. Note that the *Policy on Legal Assistance and Indemnification* applies when making decisions whether to approve requests for legal assistance and indemnification related to Crown servants subject to legal claims and actions.

3.4 This directive supports and is to be read in conjunction with the following:

- *Guideline on Claims and Ex gratia Payments*;
- *Policy on Internal Control*; and
- *Policy on Legal Assistance and Indemnification*

4. Definitions

Definitions to be used in the interpretation of this directive are in Appendix A.

5. Directive statement

5.1 Objective

To ensure adequate and timely settlement and payment of claims by or against the Crown and against its servants, and timely and accurate processing of *ex gratia* payments.

5.2 Expected results

- Appropriate use of financial resources based on the right authority, and minimizing losses due to waste, abuse, mismanagement, errors, frauds, omissions and other irregularities; and
- Adequate, accurate and timely settlement and payment of claims, including *ex gratia* payments, by or against the Crown and against its servants.

6. Requirements

6.1 **Chief financial officers** are responsible for the following:

6.1.1 Ensuring that management practices and controls expedite settlement and payment of claims, including *ex gratia* payments, and clearly indicate the following:

- The roles and responsibilities of the financial management personnel for the processing of claims, including *ex gratia* payments;

- That claims by or against the Crown that are covered by other authorities, governing instruments or policies are to be processed pursuant to those other authorities;
- The process for reporting incidents that could result in a claim by or against the Crown arising from government operations;
- The request for a legal opinion or advice from Legal Services on the claims, including *ex gratia* payments, by or against the Crown;
- The process for conducting investigations in consultation with the departmental security officer;
- The spending authorities delegated under this directive;
- The certification authorities delegated under section 34 of the *Financial Administration Act* with respect to payments to claimants; and
- That all payments of claims against the Crown, *ex gratia* payments and court awards are reported in the Public Accounts in the fiscal year that payment is made (Receiver General Manual, Chapter 15, "*Public Accounts Instructions*").

6.2 Departmental managers responsible for Claims against the Crown and *ex gratia* payments are responsible for the following:

- Requesting that the claimant provide facts upon which his or her claim is based, showing how it is calculated and original copies of documents confirming all disbursements;
- Referring claims to Legal Services:
 - When the claim involves legal proceedings;
 - To obtain a legal opinion when considering payment of an amount greater than \$25,000 to resolve a claim; or
 - When the payment is *ex gratia*.
- Conducting with the assistance of the departmental security officer as required, an investigation of reported incidents for claims of servant's effects that are damaged, lost, stolen or destroyed and ensuring these incidents are treated as claims and are not treated as *ex gratia* payments;
- Obtaining a release from the claimant in consideration of payment; and
- Accounting for all disbursements;

6.2.1 Furthermore, those managers with delegated authority to make payments for claims against the Crown and *ex gratia* payments are responsible for the following:

- Considering the legal and other merit of the claims, administrative expediency and cost-effectiveness, and reductions when the acts of omissions of any person contributed to the damage or loss incurred when deciding to make a liability payment;
- Considering whether there are any other reasonable means of compensation when deciding to make an *ex gratia* payment;
- Ensuring this directive is not used to fill perceived gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement or other governing instruments e.g., if a particular subject is governed by another instrument, and that instrument does not provide for such a payment, this directive cannot be used to expand that instrument and an exception to the governing instrument would need to be sought; and
- Ensuring all other possible sources of compensation be reviewed if there does not appear to be a governing instrument: e.g., statutory or regulatory schemes other Treasury Board policies or directives, program funding, and grants or contributions.

6.3 Departmental managers responsible for Claims by the Crown are responsible for the following:

- Making every reasonable effort to obtain value for money when resolving a claim;
- Referring all claims involving legal proceedings to Legal Services and obtaining legal opinions when material sums are at stake or when there is a lack of evidence, conflicting evidence or uncertainty as to the applicable legal principles;
- Collecting recoveries from servants, notifying the servant of the proposed retention and of the servant's right to make representation within 30 days and to consider the servant's representation, if any, before making a final decision. Note that section 155 (3) of the *Financial Administration Act* also applies; and
- Collecting or enforcing collection of payment of the claim in compliance with the Directive on Receivables Management and the the Directive on Receipt, Deposit and Recording of Money ;

Furthermore, those managers with delegated authority to resolve claims are responsible for the following:

- As required, signing a release as a condition of payment being made to resolve a claim by the Crown.

6.4 The departmental security officer is responsible for the following:

- Assisting managers with or conducting investigations based on the type of incident and the relevant dollar amount.

6.5 Monitoring and reporting requirements

6.5.1 Chief financial officers are responsible for supporting their deputy head by overseeing the implementation and monitoring of this directive in their departments, bringing to the deputy head's attention any significant difficulties, gaps in performance or compliance issues and developing proposals to address them, and reporting significant performance or compliance issues to the Office of the Comptroller General.

6.5.2 The Comptroller General is responsible for monitoring departments' compliance with the requirements of this directive and conducting a review within five to eight years.

7. Consequences

7.1 In instances of non-compliance, deputy heads are responsible for taking corrective measures within their organization with those responsible for implementing the requirements of this directive.

7.2 In support of the responsibility of deputy heads to implement the *Policy on Internal Control* and related instruments, chief financial officers are to ensure corrective actions are taken to address instances of non-compliance with the requirements of this directive. Corrective actions can include requiring additional training, changes to procedures and systems, the suspension or removal of delegated authority, disciplinary action and other measures as appropriate.

7.3 Individuals are reminded that sections 76 to 81 (Civil Liabilities and Offences) of the *Financial Administration Act* as well as sections 121 (Frauds against the Government), 122 (Breach of Trust), 322 (Theft) and 380 (Fraud) of the Criminal Code may apply.

8. Roles and responsibilities of government organizations

This section identifies other significant departments with respect to this directive. In and of itself, it does not confer any authority.

8.1 The **Department of Justice** is responsible for the following:

- Providing legal opinions and advice including negotiation advice; and
- Conducting litigation by or against the Crown and against its servants.

8.2 The **Treasury Board Secretariat, Office of the Comptroller General** is responsible for the development, oversight and maintenance of this directive and for providing interpretative advice.

9. References

9.1 Other relevant legislation and regulations

- Financial Administration Act sections 2, 7, 17, 26, 29.1, 31, 32, 33, 34, 39, and 155.1
- Canadian Human Rights Act
- Crown Liability and Proceedings Act subsection 30 (1)
- Government Employees Compensation Act
- Supreme Court Act section 98
- Personal Information Protection and Electronic Documents Act
- Secure Electronic Signature Regulations

9.2 Related policy instruments and publications

- Policy on Internal Control
- Government Contracts Regulations
- Government Security Policy
- National Joint Council (NJC) Relocation - Integrated Relocation Program (IRP) Directive
- NJC Travel Directive
- Contracting Policy and related directives
- Policy on Legal Assistance and Indemnification
- Directive on Losses of Money and Property
- Directive on Receivables Management
- Directive on Delegation of Financial Authorities for Disbursements
- Directive on Receipt, Deposit and Recording of Money
- Directive on Fleet Management: Executive Vehicles
- Directive on Fleet Management: Light Duty Vehicles
- Compensation for Work-Related Injury or Death Policies and Publications
- Guideline on Claims and Ex gratia Payments
- Guidelines on Injury-on-Duty and Workers' Compensation
- Receiver General Manual, Chapter 15, "Public Accounts Instructions"

10. Enquiries

Please direct enquiries about this directive to your departmental headquarters. For interpretation of this directive, departmental headquarters should contact:

Financial Management Policy Division
Financial Management and Analysis Sector
Office of the Comptroller General
Treasury Board Secrétariat
Ottawa ON K1A 0R5

E-mail: fin-www@tbs-sct.gc.ca
Telephone: 613-957-7233
Fax: 613-952-9613

Appendix A-Definitions

Claim (*réclamation*)

Is a claim in tort or extracontractual claim for compensation to cover losses, expenditures or damages sustained by the Crown or a claimant. For purposes of this directive, claims also include requests or suggestions that the Crown make an *ex gratia* payment. Claims can be settled in or out of court.

Ex gratia payment (*paiement titre gracieux*)

Is a benevolent payment made by the Crown. The payment is made in the public interest for loss or expenditure incurred where the Crown has no obligation of any kind or has no legal liability or where the claimant has no right of payment or is not entitled to relief in any form. An *ex gratia* payment is used only when there is no other statutory, regulatory or policy vehicle to make the payment.

Judgment (*jugement*)

Is a decision rendered by the courts to resolve a claim between respective parties.

Management practices and controls (*pratiques et contrôles de gestion*)

Are policies, processes, procedures and systems that enable a department to operate its programs and activities, use its resources effectively, exercise sound stewardship, fulfill its obligations and achieve its objectives.

Servant (*fonctionnaire*)

Refer to definition in *Policy on Legal Assistance and Indemnification*.

Settlement (*règlement*)

Is an agreement reached through negotiation between respective parties to resolve a claim.

Appendix B-Order in Council

P.C. 19918/1695
September 5, 1991

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to revoke the *Ex gratia* Payments Order, 1974, made by Order in Council P.C. 19744/1946 of September 3, 1974, and to make the annexed Order ⁽¹⁾ respecting *ex gratia* payments, 1991, in substitution therefor.

⁽¹⁾ ORDER RESPECTING *EX GRATIA* PAYMENTS, 1991

Short Title

- This Order may be cited as the *Ex gratia* Payments Order, 1991.

Authorization

- The Treasury Board may authorize any *ex gratia* payment.
- The Treasury Board may designate the deputy head of any department or departmental corporation named in Schedule I or II to the Financial Administration Act or of any other division or branch of the public service of Canada, including a commission appointed under the Inquiries Act, that is designated by the Governor in Council as a department for the purposes of the Act, and the Judge Advocate General, to authorize *ex gratia* payments.
- The Treasury Board may authorize any deputy head designated pursuant to section 3 to designate an employee of the deputy head's department, division or branch to authorize *ex gratia* payments on the deputy head's behalf.



Guideline on Claims and Ex Gratia Payments

1. Effective date

1.1 This guideline takes effect on October 1, 2009.

1.2 It replaces appendices A, B and D of the *Policy on Claims and Ex Gratia Payments* (revised June 1, 1998)

2. Context

2.1 The purpose of this guideline is to assist managers and staff to make better decisions and increase the efficiency, expediency and timeliness for settling and paying of claims by or against the Crown and against its servants and for processing *ex gratia* payments.

2.2 This guideline supports the *Directive on Claims and Ex-Gratia Payments* (hereafter referred to as the Directive).

2.3 Though this guideline elaborates on the Directive, it does not present any new mandatory requirements.

2.4 Claims can be classified as follows:

Claims within a department

When an incident resulting in damage to public property occurs within a department, compensation and restoration are the responsibility of the department. In very exceptional circumstances, interim financing may be available through Treasury Board Contingency Vote 5.

Claims between departments

As established under the Directive, one department of government cannot claim damages and receive payment from another department of the same government; therefore, as a general rule, damages are dealt with in a manner that precludes departments from seeking damages from each other (e.g., on the basis of mutual forbearance).

Claims between departments and Crown corporations

The Directive does not apply to claims between departments and Crown corporations. Nevertheless, parties to such claims are encouraged to arrive at a negotiated settlement. When a claim is pursued, it is recommended that each party voluntarily supply the other with all information in its possession.

When it is found impossible to agree by correspondence on the claim's merits and liability, it is recommended that legal officers of the department and of the corporation attempt to arrive at an agreement.

As established by the Directive; if negotiation fails, the issues of fact and law on which there is disagreement are referred to the Deputy Attorney General of Canada, who could arbitrate the dispute through Department of Justice officials or appoint a third party to arbitrate the dispute.

2.5 Exceptions include the following:

- The Directive does not apply to the relocation of household property and travel claims, or to the traditional remedies for settling bidding or contract performance disputes. These are treated in the Treasury Board's *NJC Relocation Directive*, *Travel Directive* and *Contracting Policy*.
- However after reviewing or applying traditional remedies in a contracting case, if there exist exceptional circumstances and the Crown has no liability, an *ex gratia* payment may be considered under the Directive. The approval of such a payment would be subject to the deputy head's discretion to designate authorized officials and determine the need for a legal opinion, while also taking into account the Directive's requirements governing liability and *ex gratia* payments and the sensitive nature of *ex gratia* cases.
- Claims for recovery of losses of public money are governed by the *Directive on Losses of Money and Property*.

3. Definitions

Definitions of terms used in the guideline can be found in *Appendix A* of the Directive.

4. General

4.1 After an incident has occurred risk management is a normal part of dealing with any claim that may arise between a department and other entities.

4.2 A claim might result in an amount due (or alleged to be due) or the launch of an action for damages sustained by the Crown or a claimant.

4.3 A clear distinction is drawn between settlement and payment of a claim. Settlement is the process whereby an agreement is reached through negotiation between the respective parties. Payment is the disbursement of money in respect of the settlement or a judgement of the relevant court.

4.4 Generally, claims are broadly categorized as those in tort and those in contract.

4.5 Claims in tort are those for which there is no form of written, oral or implied contractual agreement between the Crown and claimants and for which the Crown may be liable, as determined by the Department of Justice.

4.6 Claims in contract are to be dealt with according to the terms of the contract and the applicable law. Departments are to ensure that the interests of the Crown are protected and all legal rights are exercised.

4.7 When a claim is made in tort (all provinces except Quebec) or extra-contractual liability (Quebec only), it is subject to the requirements of the *Directive on Claims and Ex-Gratia Payments*.

4.8 Generally claims by or against the Crown or against its servants are negotiated without recourse to the courts by, or in conjunction with, the Department of Justice in accordance with the relevant authorities and procedures.

4.9 A high level overview of the process for claims by the Crown and claims against the Crown is included in Appendix B and Appendix C, respectively.

5. Claims under the Canadian Human Rights Act

5.1 The negotiation and payment of settlements and Tribunal Orders under the Canadian Human Rights Act (CHRA) are subject to the requirements of the Directive whereas the CHRA applies with respect to investigation and conciliation requirements.

5.2 The Directive's requirements do not apply to equal pay for work of equal value complaints lodged under section 11 of the CHRA. Such complaints are dealt with through Treasury Board personnel policy or other separate authorities.

5.3 A discriminatory practice, as defined by the CHRA, is not a tort, though it is recommended that departments deal with a complaint lodged under the CHRA as if it were a tort.

5.4 For Tribunal Orders which are made Federal Court Orders, the Federal Courts Act stipulates that payments are a statutory charge against the Consolidated Revenue Fund.

5.5 Deputy heads may designate payment approval authorities within their departments consistent with departmental practices and the sensitive nature of human rights issues.

6. Investigations

6.1 As established by the Directive, departmental security officers (DSO) are generally responsible for conducting or directing departmental claims investigations or assisting managers with the conduct of such investigations except when departments have special organizations established for this purpose. DSOs are also responsible for dealing with the appropriate law enforcement agency on such cases. Claims investigations are based on the type of incident and the dollar amount involved.

6.2 Further to the Directive's requirement that managers investigate incidents that could lead to a claim by or against the Crown or against a servant, it is recommended that the investigation be conducted at the earliest reasonable opportunity and that a report be prepared. While the level of investigation is to be commensurate with the dollar amount involved, it is recommended that the investigation includes, as is appropriate, the following:

- A full statement of the duties and responsibilities of any servant involved;
- Detailed information relating to the use of the Crown property and the relevant authority for such use;
- Statements about the incident from servants and other persons having any knowledge of the circumstances;
- Copies of any reports made to the police in connection with the incident;
- A complete account of the incident including a who was involved, what happened, where it happened, when it happened, how it happened and why it happened;
- Plans, sketches or photographs, as necessary, to contextualize or explain the nature and extent of the incident;
- Any additional information and material that may be required for a legal opinion;
- The assistance of the Royal Canadian Mounted Police; and
- The assistance of private sector claims adjustment services or collection agencies.

7. Claims against the Crown and ex gratia payments

7.1 Claimant's position

Under the Directive, when a claim is made against the Crown for an incident, managers are responsible for, without prejudice and without admitting liability, requesting the following from the claimant:

- A detailed statement of the facts upon which the claim is based;
- A detailed statement showing how the claim is calculated; and
- Original copies of documents confirming all disbursements.

7.2 Legal opinion

When claims, including the report of the investigation and any information received from the claimant, are referred to Legal Services in compliance with the Directive, it is recommended that the legal opinion requested address the following:

- Liability of the Crown;
- The steps, if any, to be taken to resolve the claim, bearing in mind the cost-effectiveness of any such steps; and
- The terms and conditions on which it would be advisable to resolve the claim, when it is advisable to settle.

7.3 Claims for servants' effects

Under the Directive, managers are to conduct investigations of reported incidents involving claims for servants' effects that are damaged, lost, stolen or destroyed. Claims for servants' effects are not to be treated as ex gratia payments. It is recommended that managers apply the following criteria to determine liability for payment:

- Servants' effects include only those items that are considered to be reasonably related to the performance of a servant's duties at the time of the loss or damage; and
- Compensation is based on the full cost to replace the effects with effects of the same or equivalent quality or the reasonable cost to repair them, whichever is most appropriate.

7.4 Ex gratia payment

As required under the Directive, managers with delegated authority to requisition payment are responsible for considering the following when deciding whether to make an *ex gratia* payment:

- Compensation from other sources, such as federal or provincial statutes, private or public programs, contract provisions and commercial insurance or recovery from third parties;
- The Directive is not used to fill perceived gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement or other governing instruments-if, for example, a particular subject is governed by another instrument and that instrument does not provide for such a payment, the Directive cannot be used to expand that instrument and an exception to the governing instrument would need to be sought;

- If there does not appear to be a governing instrument, all other possible sources of compensation are reviewed (e.g., statutory or regulatory schemes, other Treasury Board policies or directives, program funding, and grants or contributions);
- Payment may be made *ex gratia* if, after the review, there is no other source of funds or the sources provide incomplete compensation, no liability on the part of the Crown, and no limitation, restriction or prohibition imposed in existing schemes; and
- The amount of the payment may be reduced when the acts or omissions of any person, including persons for whom a payment is being considered, contributed to the damages or loss incurred.

7.5 Releases

In compliance with the Directive, managers are to obtain a release in consideration of payment for a negotiated settlement, except when it would not be administratively expedient and the manager is confident that the payment will resolve the claim. The release may be in the form shown in Appendix A, or as directed by Legal Services. For *ex gratia* payments, a release is not normally required.

7.6 Disbursements

Further to the Directive's disbursement requirements, in accounting for disbursements related to claims against the Crown and *ex gratia* payments, managers with delegated authority to make payments are responsible for considering the following:

- Part II of the Crown Liability and Proceedings Act requires that judgements against the Crown in either federal or provincial court for matters falling within the scope of this Act be paid out of the Consolidated Revenue Fund as statutory expenditures upon production of a certificate of judgement, pursuant to section 30.(1). Judgements against the Crown in the Supreme Court of Canada are likewise payable out of the Consolidated Revenue Fund, pursuant to section 98 of the Supreme Court Act. Money paid on behalf of departments from the Consolidated Revenue Fund will eventually be accounted for either by transferring funds from a departmental appropriation or by seeking supplementary funding.
- Crown witness, travel, and legal fees and other expenses incurred by, or on behalf of, the department when preparing, prosecuting or defending a court case, out-of-court settlements and liability and *ex gratia* payments are charged to the appropriation of the relevant department.
- Costs awarded against the Crown by a judgment are paid as directed by the court. Court awards are charged to the appropriation of the relevant department.
- It is important to recognize the distinction between a judgment in a proceeding brought before a court and a decision of a judge acting in a non-judicial capacity. Just as a judge is often appointed as a Commissioner of Inquiries or an arbitrator in labour disputes, a judge may likewise be appointed as an assessor or arbitrator under various acts. A decision by a judge under, for example, section 57(3) of the Health of Animals Act or section 41(3) of the Plant Protection Act is not a court award and is not covered by the statutory authorities for court judgements.

8. Claims by the Crown

8.1 Crown's position

In compliance with the Directive, managers are responsible for making every reasonable effort to obtain value for money when resolving claims by the Crown. It is recommended that managers take into account administrative expediency and cost-effectiveness when resolving such claims.

8.2 Legal opinion

In compliance with the Directive, managers are responsible for referring all claims involving legal proceedings to Legal Services and obtaining a legal opinion when material sums are at stake or when there is a lack of or conflicting evidence or uncertainty as to the applicable legal principles.

8.3 Recovery from servants

A situation may arise wherein the Crown has a claim against a servant for which the servant is not indemnified under the Policy on the Indemnification of and Legal Assistance for Crown Servants. Under the Directive, when this happens and before recovery of the claim amount either by deduction from or set-off against any money that may be due or payable by the Crown to the servant, managers are responsible for the following:

- Notifying the servant of the proposed retention and of his or her right to make representation within 30 days; and
- Considering the servant's representation, if any, before making a final decision.

8.4 Revenues

As required under the Directive, managers are responsible for collecting or enforcing payment on a claim made by the Crown in compliance with the Directive on Receivables Management and the Directive on Receipt, Deposit and Recording of Money. The money collected, including any insurance proceeds, is deposited to the credit of the Receiver General and not credited back to an appropriation unless:

- The recovery is a claim for loss or damage to a Crown asset, which according to section 39 of the Financial Administration Act, may be credited to the appropriation against which the related expenditure was charged provided the expenditure and recovery occur in the same fiscal year; or
- There is revenue spending authority.

8.5 Release

As established under the Directive, managers with delegated authority to resolve claims may sign a release as a condition of payment being made to resolve a claim by the Crown.

Appendix A - Release

Know all persons by these present that (*name and address of claimant*) does hereby remise, release and forever discharge Her Majesty the Queen in right of Canada and (*name of any officer or servant of the Crown involved*), from all manners of action, claims or demands, of whatever kind or nature that (*name of claimant*) ever had, now has or can, shall or may hereafter have by reason of damage to or personal injury, or both, (*here set out subject matter of the damage*) as a result of or in any way arising out of (*here set out incident and the date, time and place of occurrence*).

It is understood and agreed that this Release shall only be effective when payment will have been made on behalf of Her Majesty to (*name of claimant*) of the sum of \$_____.

It is also understood that Her Majesty the Queen in right of Canada does not admit any liability to (*name of claimant*) by acceptance of this Release or by payment of the said sum of \$_____.

Signed, Sealed and Delivered in the Presence of

Witness:

For the (*department or agency name*):

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 20____.

Print Name _____

Print Name _____

Signature _____

Signature _____

Phone number (____) ____ - ____

Phone number (____) ____ - ____

Witness:

For the Claimant or person duly authorized for the Claimant:

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 20____.

Print Name _____

Print Name _____

Signature _____

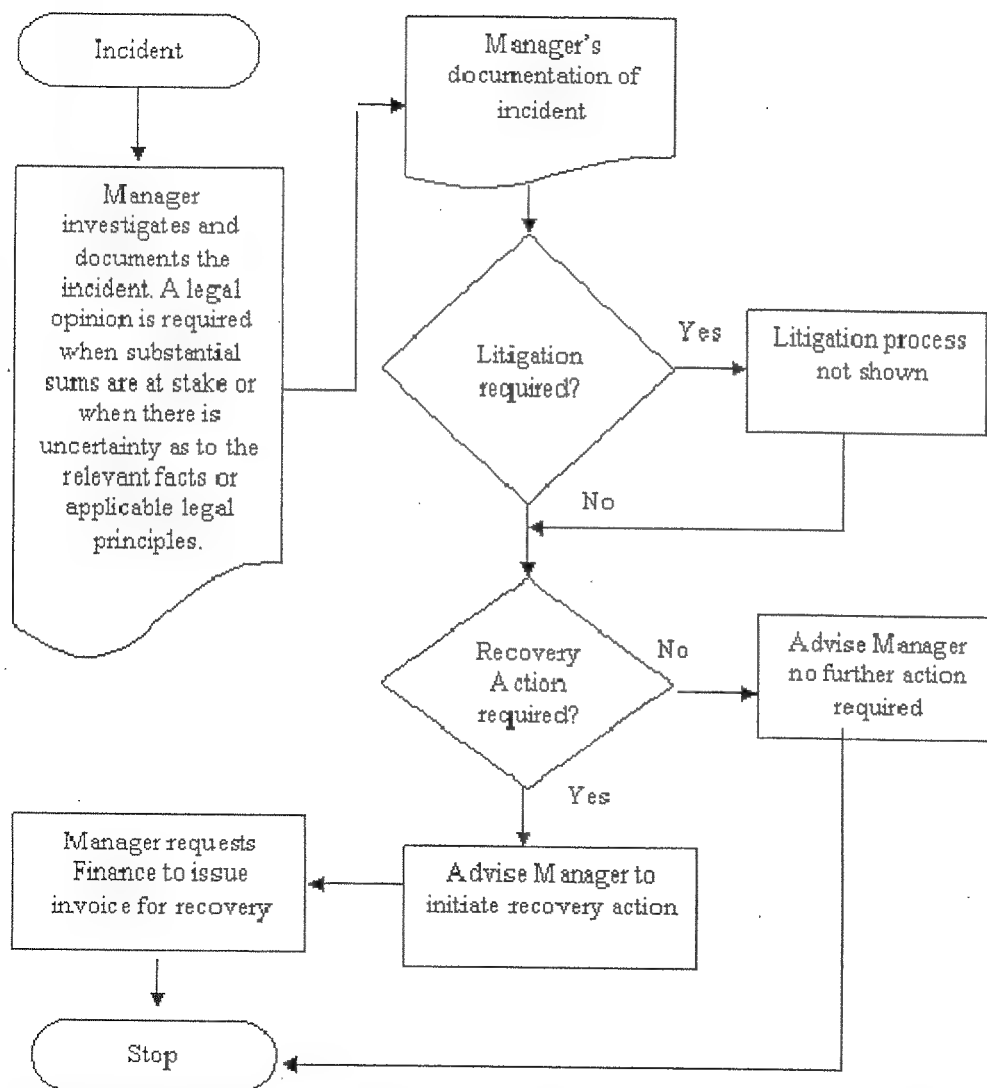
Signature _____

Phone number (____) ____ - ____

Phone number (____) ____ - ____

Appendix B - Claims By the Crown

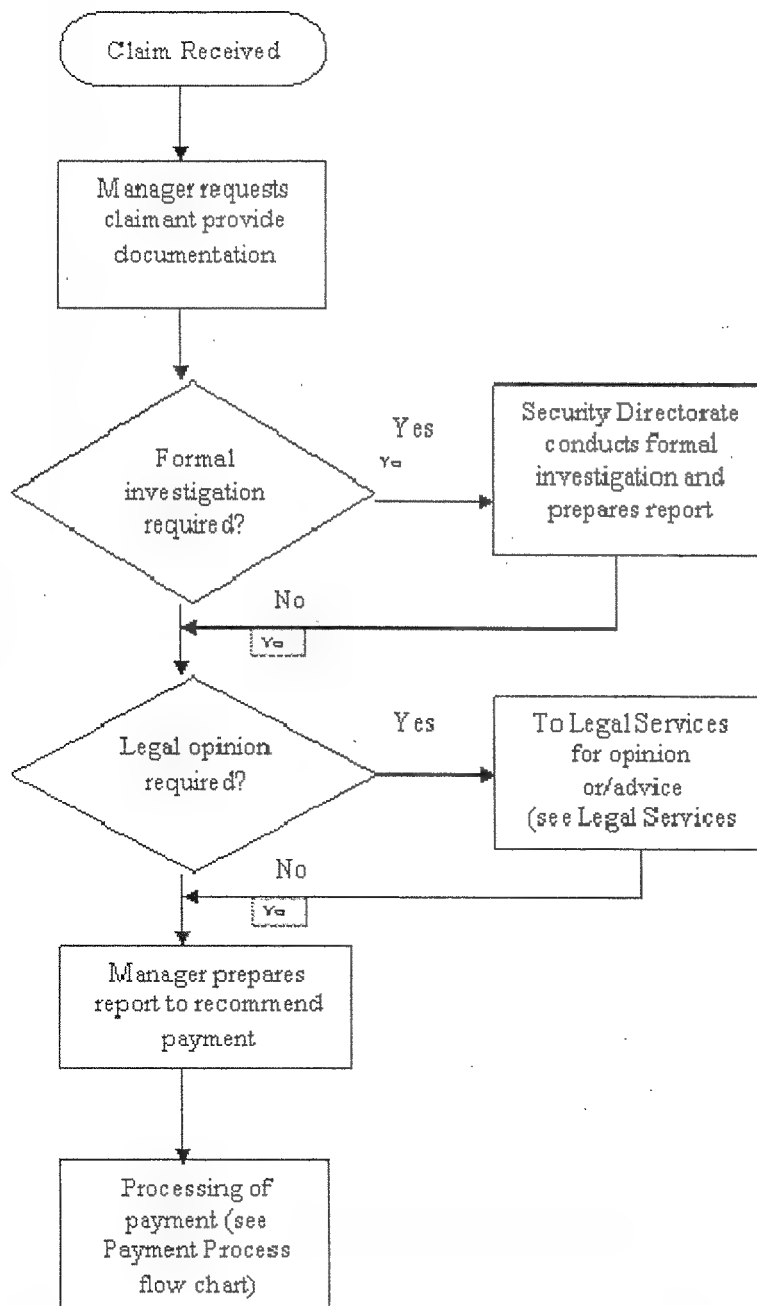
Manager	Legal Services
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Text version: Claims By the Crown

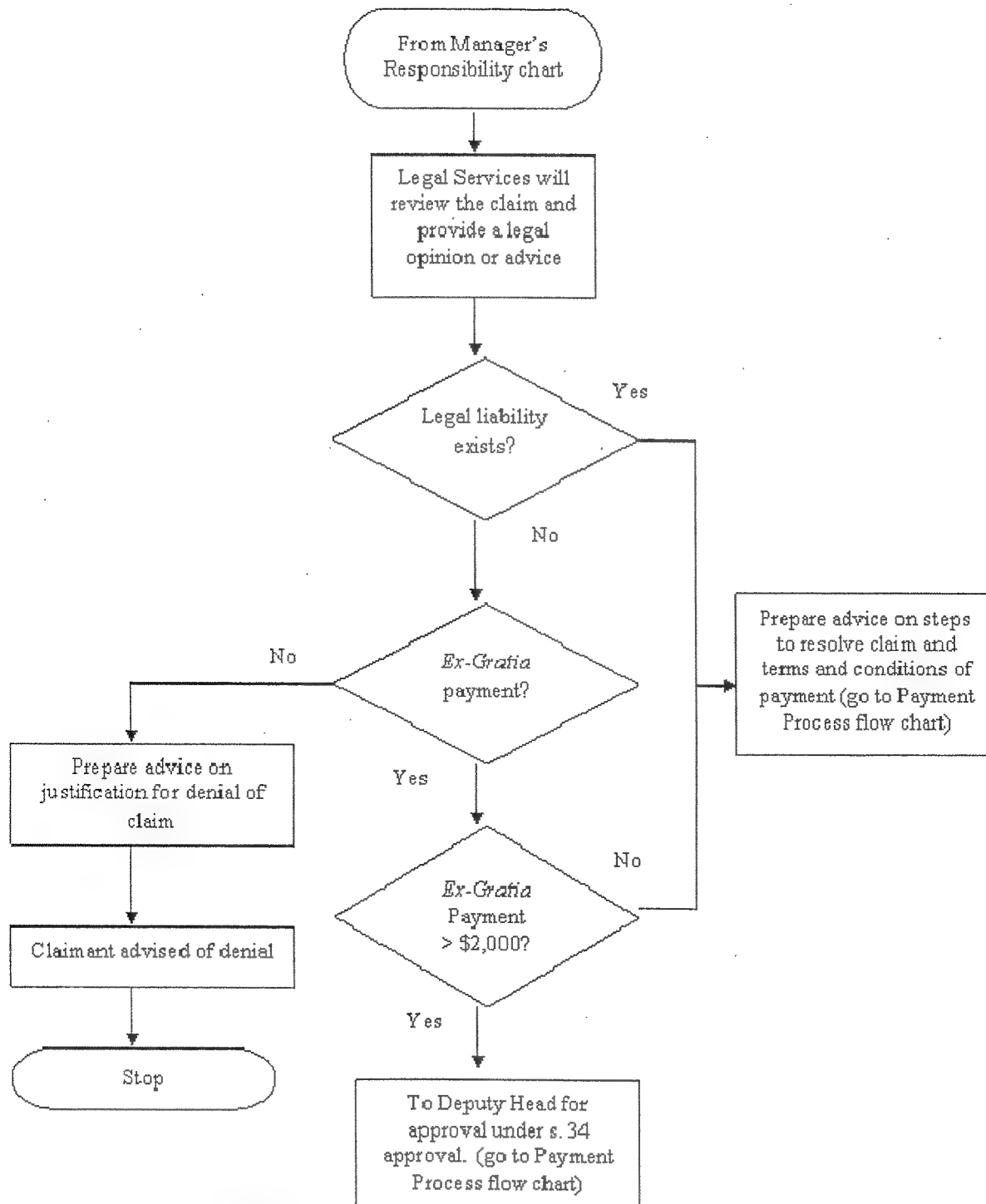
Appendix C - Claims Against the Crown

Manager's Responsibilities



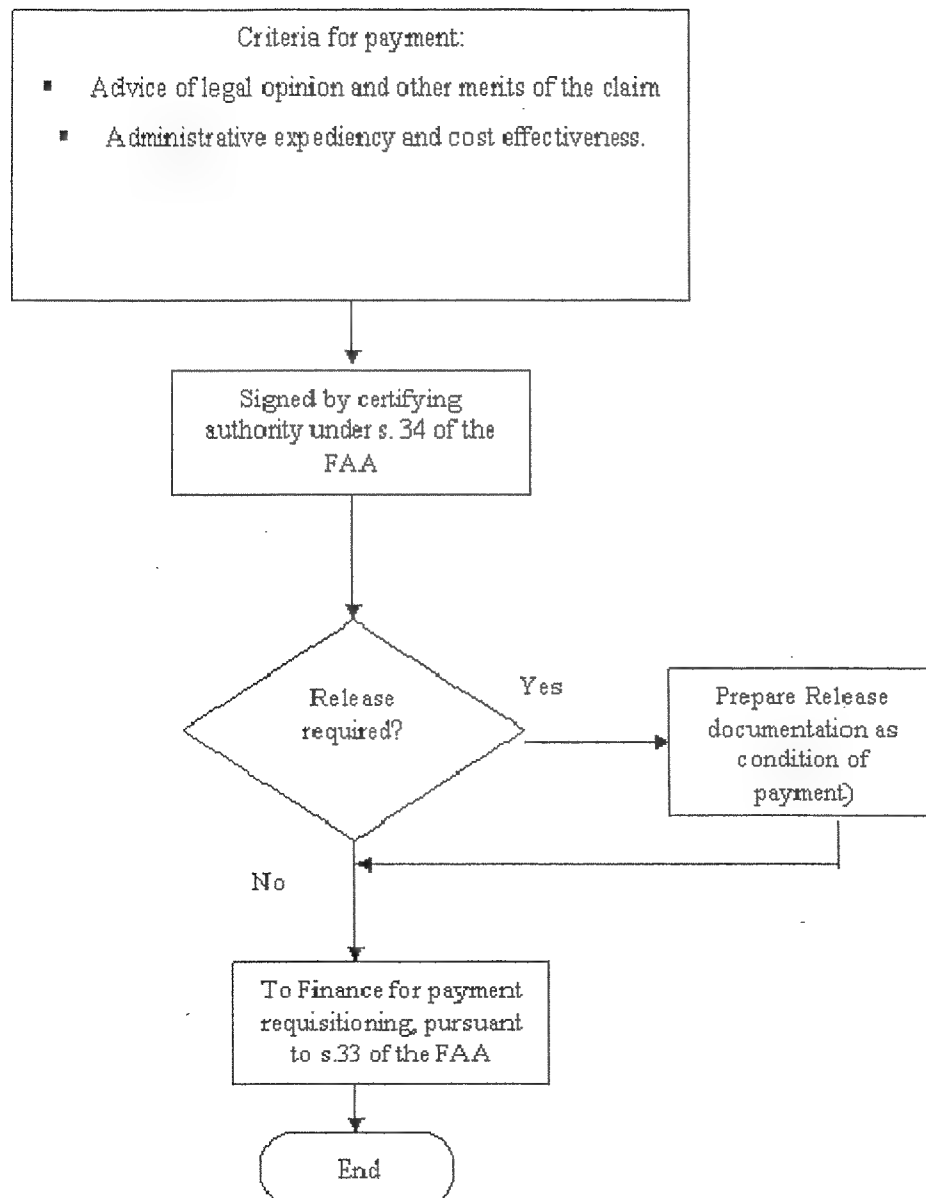
Text version: Manager's Responsibilities

Legal Services



Text version: Legal Services

Payment Process



Text version: Payment Process



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Canada

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Schedule 2H

Delegated authority for operational matters Labour Relations and Compensation

Section	Topic and Description	CBSA - 1	CBSA - 2	CBSA - 3	CBSA - 4	CBSA - 5	References and Remarks
1 a)	Hours of work, including flexible work arrangements						
1 a) 01	Establishes service hours to provide service to the public.	X	X	X			Maximum hours of work Policy. Note: In consultation with the Branch VP.
1 a) 02	Approves a day work schedule, including flexible hours of work and variable work week.	X	X	X	X	X	PSTCER, the relevant collective agreement and Policy on maximum hours of work.
1 a) 03	Approves shift schedules.	X	X	X	X	X	PSTCER and the relevant collective agreement. Note: If shifts are to be changed other than already existing standard shifts established by the collective agreement, consultation with Regional Labour Relations and unions is required.
1 a) 04	Approves variable shift schedule arrangements.	X	X	X			PSTCER and the relevant collective agreement. Note: Consultation with Labour Relations and union is required

							prior to approval, at both local and Corporate levels.
1 a) 05	Requires an employee to work overtime or on a designated holiday.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 a) 06	Approves requests for part-time employment.	X	X	X	X	X	
1 a) 07	Approves request for telework arrangements.	X	X	X	X		Telework Policy.
1 b)	Pay						
1 b) 01	Authorizes rate of pay set above the minimum on appointment from outside the Public Service.	X	X	X			Pay Administration Manual.
1 b) 02	Authorizes payment for acting appointments:						PSTCER and the relevant collective agreement.
	⇒ up to 4 months	X	X	X	X	X	
	⇒ 4 months to 12 months	X	X	X	X		PSER and Staffing Policy.
	⇒ over 12 months.	X	X				
1 b) 03	Delays statutory pay increase due to unsatisfactory performance.	X	X				PSTCER Note: Consultation with Regional Labour Relations is required prior to approval.
1 b) 04 i	Authorizes recovery of overpayment at a lower recovery rate than 10% over an extended period of time.	President					Pay Administration Manual.
1 b) 04 ii	Authorizes recovery of overpayment at a recovery rate between 10% and 99.9% over an extended period of time.	X	X				Pay Administration Manual.
1 b) 05	Authorizes payment of call-back pay, standby, overtime/travel time.	X	X	X	X	X*	The relevant collective agreement.
1 (b) 06	Approves payment of shift premium.	X	X	X	X	X*	The relevant collective agreement.
1 b)	Approves payment of late	X	X	X	X	X*	The relevant collective

07	hour premium.						agreement.
1 b) 08	Recommends to Treasury Board Secretariat a waiver of penalty for superannuation purposes in cases of involuntary termination of employment.	X	X				Superannuation Manual.
1 b) 09	Approves payment of commuting assistance allowance.	X	X	X	X	X*	The relevant collective agreement and NJC Commuting Assistance Directive.
1 b) 10	Authorizes payment of bilingualism bonus.	X	X	X	X		NJC Bilingualism Bonus Directive.
1 b) 11	Authorizes reimbursement of membership or registration fees.	X	X	X	X		The relevant collective agreement and TBS Membership Fees Bulletin, dated July 10, 2002.
1 b) 12	Authorizes payment of non-accountable vacation travel assistance advance to employees in an isolated post.	X	X	X	X		NJC Isolated Posts and Government Housing Directive.
1 c)	Leave						
	Vacation leave and compensatory leave						
1 c) 01	Schedules and approves vacation leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 02	Displaces a period of vacation leave due to bereavement, illness in the family or sick leave on production of a medical certificate.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 03	Approves the liquidation of unused vacation leave.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 c) 04	Approves carry-over of vacation leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 05	Cancels or alters approved vacation leave or recalls from vacation leave.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 (c) 06	Establishes (where not already defined in collective	X					PSTCER and the relevant collective

	agreements) the period for payment of unused compensatory leave.						agreement.
							Note: Consultation with Corporate Labour Relations.
1 c) 07	Approves compensatory leave in lieu of payment of overtime.	X	X	X	X	X*	PSTCER and the relevant collective agreement.
1 c) 08	Grants travel status leave with pay (7.5 hrs of time off) to employees away from permanent resident for 40 nights in a fiscal year.	X	X	X	X	X	Relevant collective agreement.
Sick leave							
1 c) 09	Grants paid sick leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 (c) 10	Grants advancement of sick leave credits.	X	X	X	X		PSTCER and the relevant collective agreement. Note: Consultation with Regional Labour Relations is required.
1 c) 11	Approves sick leave without pay :						PSTCER and the relevant collective agreement and the Leave Without Pay Policy. Note: Consultation with Regional Labour Relations is required.
	→ up to 1 year	X	X	X	X	X	
	→ over 1 year but less than 2 years	X	X	X	X		
	→ over 2 years.	X	X				
1 c) 12	Approves injury on duty leave with pay :						PSTCER and the relevant collective agreement and the Injury-on-Duty Leave Policy. Note: Consultation with Regional Labour Relations is required.
	→ up to 130 days	X	X	X	X	X	
	→ over 130 days.	X	X	X	X		
1 c) 13	Grants up to 3.75 hrs of time-off with pay to pregnant employees to attend routine medical appointments.	X	X	X	X	X	

1 c).14	Approves sick leave with or without pay where a series of continuing appointments are necessary for the treatment of a particular condition relating to the pregnancy.	X	X	X	X	X	
Other types of leave (with or without pay)							
1 c) 15	Approves bereavement leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 16	Grants bereavement leave with pay for a period greater than and/or in a manner different than that provided for in the collective agreement.	President					PSTCER and the relevant collective agreement.
1 c) 17	Approves court leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 18	Approves examination leave with pay.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 19	Approves leave with pay for family-related responsibilities.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 20	Approves maternity- related reassignment or leave without pay for reason of pregnancy or nursing.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 21	Approves parental leave without pay.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 22	Approves personnel selection leave with pay for a position in the PS.	X	X	X	X	X	PSTCER and the relevant collective agreement.
1 c) 23	Approves leave with or without pay for reserve forces training.	X	X	X			Leave With Pay and Leave Without Pay Policies.
1 c) 24	Approves leave with pay to participate in international sporting events.	X	X	X			Leave With Pay Policy.
1 c) 25	Approves leave with or without pay for union business.	X	X	X	X ¹		Relevant collective agreement.

1 c) 26	Approves leave without pay for immediate care of a family member :						PSTCER and the relevant collective agreement.
	⇒ up to 1 year	X	X	X	X	X	
	⇒ for more than 1 year but not exceeding 5 years.	X	X	X	X		
1 c) 27	Approves leave without pay for personal needs:						PSTCER and the relevant collective agreement.
	⇒ up to 3 months.	X	X	X	X	X	
	⇒ for more than 3 months but not exceeding 1 year.	X	X	X	X		
1 c) 28	Approves leave without pay for relocation of spouse :						PSTCER and the relevant collective agreement.
	⇒ up to 1 year (when permanently relocated).	X	X	X	X		
	⇒ for more than 1 year but not exceeding 5 years (when not permanently relocated).	X	X	X	X		
1 c) 29	Approves time-off with pay to fulfill religious obligations.	X	X	X	X		PSTCER and the relevant collective agreement.
1 c) 30i	Provides the employee who requests permission to seek nomination or to be a candidate for municipal, federal, provincial or territorial election with a completed "Deputy Heads Input Form" in order to complete the employees request to be submitted to the PSC.	President					PSEA and PSC Guidelines on Political Activities
1 c) 30ii	Endorses PSC decision in regards to cessation of employment or leave of absence without pay when permission granted by PSC to seek nomination or to be a candidate for municipal, federal, provincial or territorial election.	X	X				PSEA and Leave Without Pay Policy.
1 c) 31	Approves self-funded leave.	X	X	X	X		Self-funded leave

							Policy.
1 c) 32	Approves leave with income averaging.	X	X	X	X		Leave with Income Averaging Policy.
1 c) 33	Approves pre-retirement transition leave.	X	X	X	X		Pre-retirement Transition Leave Policy.
1 c) 34	Approves leave with pay when circumstances not directly attributable to employee prevent reporting for duty.	X	X	X	X	X	Relevant collective agreement.
1 c) 35	Approves leave with or without pay for purposes other than those specified in the collective agreement or PSTCER.	X	X	X	X		Relevant collective agreement. Note: Consultation with Regional Labour Relations is required.
1 c) 36	Approves off-duty status (lack of work).	X	X	X			Note: Consultation with Regional Labour Relations is required.

Education leave

1 c) 37	Approves education leave without pay for a period up to one year and without allowance in lieu of salary which involves eligibility for :						Relevant collective agreement.
	→ educational fees totaling less than \$10,000.00	X	X	X			
	→ educational fees totaling more than \$10,000.00	X HQ	X Regions				
1 c) 38	Approves education leave without pay for a period up to one year and with allowance in lieu of salary which involves eligibility for :						Relevant collective agreement.
	→ educational fees totaling less than \$10,000.00	X	X				
	→ educational fees totaling more than \$10,000.00	X HQ	X Regions				
1 c) 39	Approves career development leave with pay.	X	X				Relevant collective agreement.
1 c) 40	Approves personal leave.	X	X	X	X	X	PSTCER and the relevant collective agreement.

1 c) 41	Authorizes management leave.	X					
1 c) 42	Approves volunteer leave.	X	X	X	X	X	Relevant collective agreement.
1 d) Union issues							
1 d) 01	Approves union notices and other materials for posting.	X	X	X	X ¹	X ¹	Relevant collective agreement. Note: Consultation with Regional Labour Relations is recommended.
1 d) 02	Authorizes union representative to access the employer's premises.	X	X	X	X	X	Relevant collective agreement.
1 d) 03	Grants permission to union representative to investigate employee complaints of urgent nature.	X	X	X	X	X	Relevant collective agreement.
1 d) 04	Authorizes union representative to meet with management for the purpose of dealing with grievances.	X	X	X	X	X	Relevant collective agreement.
1 d) 05	Authorizes union representative to attend meeting called by management.	X	X	X	X ¹	X ¹	Relevant collective agreement.

X¹ DeNotes that the individual is delegated only if he/she is excluded.

X* DeNotes that the individual is delegated with financial signing authority.

Date Modified: 2008-06-24

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Overview

Resolving Disputes

Tools and Resources

Victims of discrimination are often entitled to monetary remedies that can represent general or specific compensation as described below.

General compensation

There are two types of general compensation under the *Act*. Compensation can be awarded or negotiated in recognition of the pain and suffering caused by the discriminatory acts, and in recognition of wilful and reckless discriminatory practice.

Compensation for pain and suffering

Paragraph 53(2)(e) of the *Act* sets out the provisions for the payment of money to compensate for injured feelings caused by the discrimination:

that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.

Prior to its amendment on June 30, 1998, the *Act* provided for a maximum of \$5,000 for pain and suffering.

A complainant may be entitled to monetary compensation for the injury to his or her dignity and self-respect caused by the discriminatory acts. This type of compensation is frequently awarded by a tribunal. Unlike proceedings in civil courts, the amount of the award is limited by the maximum permitted under the *Act* (which is currently \$20,000), as well as what has been awarded in similar cases. The average amount awarded as compensation for pain and suffering by the Canadian Human Rights Tribunal in all cases from its creation until the end of March 2006 was \$3,275. Since 1998 when the ceiling was raised to \$20,000, the average award has increased to \$7,444.

The complainant may establish mental anguish by evidence of embarrassment, humiliation, loss of self-respect or mental distress. Symptoms of an injury to self-respect may include sadness, feelings of anger or depression, and self-criticism. The effect of an injury to self-respect may be demonstrated by consequences such as sleeplessness, loss of appetite, changes in behaviour or personality, damage to personal relationships, diminished job performance, nightmares or reliving the events involved.

Mental anguish may be established by a complainant's statements or by statements from spouses, family members, friends or co-workers. Opinions from experts such as physicians, psychologists, therapists, behavioural scientists or mental health professionals may also be helpful.

The Tribunal has recognized that, in some cases, compensation for hurt feelings also serves a greater public interest by sending a message that discrimination will not be tolerated.

Compensation for wilful or reckless discriminatory practice

Subsection 53(3) of the *Act* sets out the provisions for the payment of money when the respondent is found to have engaged in discriminatory practices wilfully and recklessly:

In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

This type of compensation is seldom ordered. An infringement is wilful when the conduct or practice involves a deliberate act, and is reckless when the conduct or practice was engaged in with indifference to its consequences.

Specific compensation

Specific compensation can be awarded for lost wages, benefits, expenses and interest.

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Overview

Resolving Disputes

Tools and Resources

There are a number of non-monetary remedies available under the *Act*. This section sets out the remedies that are commonly found in human rights settlements or orders by the Human Rights Tribunal. Creativity in crafting remedies is necessary to ensure that complainants' interests are met through settlements negotiated by Commission staff.

Offer of position, service or accommodation

Paragraph 53(2)(b) of the *Act* states that:

The person make available to the victim of the discriminatory practice, on the first reasonable occasion, such rights, opportunities, and privileges as, in the opinion of the Tribunal, are being or were denied the victim as a result of the practice.

Where a complainant's employment was terminated or the complainant was not hired, reinstatement or an offer of employment in the job which was denied is normally expected. If that position has been filled, the offer is normally for the next available position.

If the denial of the employment took place during the hiring process, it is necessary to assess the likelihood that the complainant would have been successful had the process not been discriminatory. If the evidence supports that the complainant likely would have obtained the position but for the discrimination, he or she may be entitled to a position. Otherwise, the complainant is only entitled to an opportunity to compete for the position.

This must be considered however in light of the availability of other jobs at the time of the original refusal as compared to their availability at the time the remedy is being negotiated.

In some cases, a conditional reinstatement of an employee may be possible. The reinstatement may be conditional on the behaviour of the employee (e.g., completion of an alcohol rehabilitation program) or the employer (e.g., transferring alleged harassers to another work-site).

Similarly, an offer of a comparable service, facility or housing, or an offer to reserve the next available and comparable service, facility or housing for the complainant, may be appropriate.

Other Job Opportunities

Other job opportunities, such as promotions, transfers or increased salary rates, may be ordered to remedy discrimination. Complainants may be allowed to skip jobs in situations where their skills and abilities warrant such action and where promotion would have been a normal consequence after an interval of service in a lower-level position.

Seniority

A complainant may be given credit for seniority that would have been earned but for discrimination. In many industries, the job protection provided by seniority is more important than back pay. However, unions frequently become concerned if other people's seniority is adjusted to fit the complainant into the system. Back seniority should be sought and obtained whenever possible. It is reasonable to ask the respondent to discuss the matter with the relevant bargaining agent.

Letter of apology or regret

In some instances, some validation of the complainant's concerns will be important and of interest to the complainant in resolving a complaint. It is unlikely however, and has never been established in jurisprudence, that a respondent will admit liability or guilt in writing to a complainant. However, the respondent can apologize or express regret for the actions that led the complainant to believe that he or she was a victim of discrimination.



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Overview

Resolving Disputes

Tools and Resources

Some complaints raise broader public interest issues, i.e., issues that go beyond the complainant's individual situation and interests. These issues must be addressed through any remedy that is achieved in order to satisfy the Commission's mandate.

Commitment to respect the Act

It is possible to include a term which requires the respondent to make a commitment to abide by the CHRA. This might be manifested by displaying a poster or plaque or by contacting clients or community organizations with this message.

Educational seminars

Educational seminars are a common element in terms of settlement. They are most effective when there is evidence that the respondent and its representatives are unaware of the law or of human rights principles. The seminars can be aimed at the alleged discriminator or a larger group of employees.

Commission staff will occasionally agree to conduct training programs that are part of a settlement to a complaint. When this is not possible, however, the respondent is responsible for obtaining the appropriate training from other sources.

Policy Development

Many times, a complete preventive settlement requires the respondent to develop and promulgate a policy to prevent similar discriminatory acts from occurring in the future. This is quite common in harassment complaints. The general principle is that the respondent should develop the policy itself. The final policy may be attached to a settlement, or the settlement may be written in such a way that the policy is to be developed and submitted to the Commission at a later date. If the policy is to be submitted later, the minutes of settlement must specify the time frame and, where appropriate, make it clear that the policy is subject to the Commission's approval.

Policy proposals should be reviewed by the Policy and International Activities Branch, the Legal Services Branch or other sections of the Commission if appropriate, before being presented to the Commission as part of a settlement package.

Special Programs

Subparagraph 53(2)(a)(i) of the Act provides that to prevent future discrimination, the respondent be required to adopt a special program referred to in subsection 16(1) of the Act. In some cases, it may appear appropriate to seek the implementation of such a program. However, this type of remedy should not be pursued without first obtaining advice.

Other systemic remedies

Where discrimination has resulted in an adverse impact on a protected group, the Commission may seek prospective relief from a respondent. Affirmative remedies may include affirmative recruitment, the establishment of goals and timetables to remedy under-representation of groups, and the establishment of special training programs for group members.

Donation to a charitable organization

In recognition of issues arising in a matter, a term of settlement could be that the respondent make a donation to a charitable organization advocating the principles asserted by the complainant.

Reporting requirements

An appropriate preventive remedy may include periodic reports to the Commission for a specified period of time on changes in a respondent's practices, workforce, or other information.

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Overview

Resolving Disputes

Tools and Resources

The *CHRA* sets out the remedies that a Human Rights Tribunal can order if it concludes that a complaint is substantiated. These remedies, monetary and non-monetary in nature, are intended to restore the complainant to the situation in which he or she would have been had discrimination not occurred.

The sections of the *Act* which set out the remedies provide guidance to Commission staff whose role it is to assist the parties to a complaint arrive at a settlement.

In general, remedies:

- recover for the complainant what he or she has lost as a result of the discrimination; and
- prevent discrimination from occurring in the future by addressing systemic discrimination issues.

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Overview

Resolving Disputes

Discrimination and Harassment

The employer is responsible for any harassment that occurs in the workplace. It is the employer's duty to:

- make it clear that harassment will not be tolerated;
- establish a harassment policy;
- make sure every employee understands the policy and procedures for dealing with harassment;
- inform supervisors and managers of their responsibility to provide a harassment-free work environment;
- investigate and correct harassment problems as soon as they come to light, even if a formal complaint has not been received.

The employer should be prepared to take appropriate disciplinary action against an employee found to have harassed someone.

Last Updated: 2011-08-09



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Overview

Resolving Disputes

Discrimination and Harassment

Don't ignore harassment. Report it. If you are harassed, there are several steps you can follow:

- Make it clear to the harasser that his or her actions are not welcome.
- Document your case. Keep a written record of the incidents, including times, places and witnesses.
- If you are harassed at work, contact the appropriate person identified in your employer's harassment policy. If you are not satisfied, there might be a union or company grievance procedure you can follow.
- If you are harassed by the provider of a service, complain to the management.
- If these steps do not get appropriate results, and the harassment is based on one of the 11 grounds of discrimination prohibited under the Canadian Human Rights Act, you may wish to file a complaint with the Canadian Human Rights Commission. Contact the Commission.

If a harassment complaint is made against you

- Discuss the matter with your supervisor, personnel officer, or union representative.
- Co-operate fully with the person(s) conducting the investigation, so that the facts may be determined.

Last Updated: 2011-08-09

Sex, Marital Status, Family Status

Area: Provision of services

Employment

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant, the first woman employed in a non-traditional occupation, alleged that a supervisor harassed her by initiating unwelcome physical contact and making sexist comments. She also alleged that the supervisor made veiled threats when she complained about his behaviour. She complained that her employer failed to provide her with a harassment-free work environment.

Settlement:

Employer has expressed regret for the circumstances that gave rise to the complaint
Workplace reintegration process.

Financial compensation for general damages .

Policy / systemic remedy:

Employer to work with union to establish policies and recourse mechanisms for dealing with harassment in the workplace.

Ground: Sex

Area: Employment

Sector: Other

Allegation:

The complainant alleged that she was harassed by an individual who served on a board of directors with her. She also alleged that her employer failed to provide her with a workplace free of harassment.

Settlement:

Financial compensation for pain and suffering.

Policy / systemic remedy:

Development of anti-harassment policy.

Training on anti-harassment policy for directors, staff and members.

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that her employer failed to act promptly when she reported a number of incidents of sexual harassment that were happening in her workplace. She alleged that her employer did not investigate thoroughly and chose not to deal with the matter.

Settlement:

Financial compensation for lost wages.

Financial compensation for pain and suffering.

Financial compensation for training.

Policy / systemic remedy:

Commitment that future practices will comply with the employer's harassment policy.

Workplace harassment training for staff and managers.

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant, was employed as a truck driver, alleged that another driver harassed her and that her employment was terminated after she complained to her supervisor. The employer indicated that it investigated the matter and disciplined the other driver. However, the complainant had also been disciplined during her employment for various reasons, which eventually led to her termination.

Settlement:

Financial compensation for pain and suffering.

Reimbursement of pension contributions.
Confirmation of employment.
Labour Canada complaint to be withdrawn.

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that she was sexually harassed by a coworker, that the employer failed to provide corrective action and terminated her employment.

Settlement:

Reference letter.

Financial compensation for pain and suffering.

Policy / systemic remedy:

Development of an Anti-harassment policy and training to all staff.

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that her employer denied her an employment opportunity when it filled an available position she had expressed an interest in and for which she was being groomed while she was on maternity leave.

Settlement :

Financial compensation for lost wages.

Letter of employment confirming employment data.

Agreement that complainant will not reapply for employment with respondent.

Ground: Sex

Area: Employment

Sector: Banking

Allegation:

The complaint alleged she was sexually harassed by the employer's representative and that the her employment contract was subsequently cancelled because she rejected his advances.

Settlement:

Financial compensation for general damages.

Financial compensation for lost wages.

Financial compensation for legal fees.

Grounds: Sex, marital status and family status.

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that she was asked questions about her marital and family status during a job interview and that once hired she learned that she was paid less than a male colleague for the same work. Her employment was terminated soon after she announced that she was pregnant.

Settlement:

Financial compensation for pain and suffering.

Letter of employment.

Ground: Family Status

Area: Employment

Sector: Federal Public Service

Allegation:

The complainant is the mother of a school aged child with disabilities. She alleged that although she had previously been accommodated to provide care for her child, the work arrangements were discontinued due to operational requirements. She renewed her request to be accommodated and it was denied.

Settlement:

Accommodation arrangements to be confirmed by the parties.

Policy / systemic remedy:

The employer reaffirmed commitment to existing policies and to provide a reminder to its Managers.
Training on the Duty to Accommodate to be provided to Managers by the Commission.

Ground: Sex (pregnancy)

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that her employer terminated her employment because of her pregnancy

Settlement:

Financial compensation for general damages.

Ground: Sex

Area: Employment

Sector: Banking

Allegation:

The complainant started to have seizures at work and had to take sick leave on several occasions due to her disability. She alleged that because of her absences, her supervisor harassed her by yelling and swearing at her and he advised her he no longer wanted to accommodate her disability. Her employment was eventually terminated.

Settlement:

Financial compensation for lost wages.

Financial compensation for general damages.

Financial compensation for pain and suffering.

Financial compensation for legal fees.

Ground: Sex

Area: Employment

Sector: Banking

Allegation:

The complainant alleged that he was discriminated against on the basis of his gender. He alleged that the employer did not pay him the maximum amount for his bonus although he had reached his sales goal whereas women co-workers had received the maximum bonus in spite of not meeting their goals. He alleged that the same treatment was done to a male co-worker.

Settlement:

Financial compensation for pain and suffering.

Letter of confirmation of employment.

Grounds: Sex and age

Area: Employment

Sector: Transportation

Allegation:

The complainant, who is over 50, alleged she was sexually harassed by her supervisor. She complained about the harassment and her supervisor invited her to retire and she refused. Her employment was eventually terminated.

Settlement:

Financial compensation for general damages.

Ground: Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant was employed for 4 years during which she took her first maternity leave. She alleged that when she became pregnant with a second child her Manager made comments about her availability for work. Her employment was eventually terminated.

Settlement:

Financial compensation for general damages.

Financial compensation for legal fees.

Grounds: Sex and family status

Area: Employment

Sector: Federal Public Service

Allegation:

The complainant alleges she was discriminated against when her substantive position was reclassified and she was not entitled to the retroactive lump sum payment. The complainant believes that this was linked to her maternity leave.

Settlement:

Financial compensation for lost wages.

Financial compensation for pain and suffering.

Grounds: Disability and sex

Area: Employment

Sector: Communications

Allegation:

The complainant suffers from an illness that is anxiety/stress-related. She alleged that her employer failed to accommodate her and treated her in an adverse differential manner by denying and then terminating medical benefits during a labour dispute.

Settlement:

Financial compensation for pain and suffering.

Grounds: Disability and sex

Area: Employment

Sector: Transportation

Allegation:

The complainant was on long term disability for two years. When she returned to work, she was five months pregnant and was unable to perform some of the duties of her job. She alleged that she was denied accommodation due to pregnancy and disability. She also alleged that she was sexually harassed by an individual with whom she had a relationship in the past and when she complained to her employer, the matter was not investigated thoroughly.

Settlement:

Financial compensation for pain and suffering.

Financial compensation for lost wages.

Grounds: Disability and family status

Area: Employment

Sector: Other

Allegation:

The complainant, who is a mother of one and has lupus, alleged that the employer failed to take into consideration her family needs and her medical appointments. She alleged that she had to work overtime contrary to the agreed hours of work. Her employment was eventually terminated.

Settlement:

Financial compensation for pain and suffering.

Letter of employment.

Verbal expression of regret.

Grounds: Disability and family status

Area: Employment

Sector: Transportation

Allegation:

The complainant, who is Aboriginal, alleged that she was subjected to a poisoned work environment in that a few co-workers would often make racially derogatory statements and treated her differently because she was not related to them. She further alleged that when her employer attempted to deal with this matter, her co-workers began to retaliate against her. She eventually had to leave her employment.

Settlement:

Financial compensation for pain and suffering.

Policy / systemic remedy:

Commitment to continue to provide sensitivity training to new employees.

Reassessment of the need to provide sensitivity training more frequently.

Grounds: Disability, race, national or ethnic origin and sex

Area: Employment

Sector: Transportation

Allegation:

The complainant, who has hyperthyroidism and is Caucasian, alleged that her supervisor harassed her and subjected

he close supervision because she is of a different ethnicity than the majority of employees in her department. She further alleged that the harassment became more apparent after she was treated for her illness and it became known that she was planning a second pregnancy. Her employment was eventually terminated.

Settlement:

Financial compensation for pain and suffering.
Letter of reference.

Grounds: Sex and disability

Area: Employment

Sector: Other

Allegation:

The complainant alleged that she was subjected to sexual harassment by her supervisor. The supervisor was removed, however the complainant was treated in an adverse differential manner by her new supervisor who was a close friend of the previous supervisor. Eventually the complainant's employment was terminated.

Settlement:

Financial compensation for general damages.
Financial compensation for pain and suffering.
Financial compensation for legal fees.
Counselling.
Letter of Reference.

Grounds: Race, national or ethnic origin, colour and sex

Area: Employment

Sector: Banking

Allegation:

The complainant, a black African woman, alleged that her manager made comments and racial slurs to her at work. She notified senior management of her concerns and felt that the harassment consequently intensified. Her employment was eventually terminated.

Settlement:

Financial compensation for general damages.
Financial compensation for legal fees.
Retiring allowance.
Letter of employment.

Grounds: Race, colour, national or ethnic origin and sex

Area: Employment

Sector: Telecommunications

Allegation:

The complainant, a black woman of Caribbean descent, alleged that she suffered adverse differential treatment by being paid less than people in the same position. She also alleged that she was harassed in her employment because of her race, colour, national or ethnic origin or sex which eventually led to her resignation from the respondent.

Settlement:

Financial compensation for pain and suffering.
Special compensation.
Financial compensation for legal expenses fees.
Retiring allowance.

Grounds: Family status and race

Area: Employment

Sector: Banking

Allegation:

The complainant, a black man and soon to be father, alleged that a Branch Manager did not honour a previous employment offer, after learning that he was about to take a paternity leave.

Settlement:

Financial compensation for pain and suffering.
Financial compensation for general damages.

Grounds: National or ethnic origin, race, colour and family status

Area: Employment

Sector: Other

Allegation:

The complainant, a métis woman, worked for an Aboriginal band council. She alleged she was harassed by her supervisor because she was not a band member or married to one. Her employment was eventually terminated.

Settlement:

Financial compensation for general damages.

Policy / systemic remedy:

Specific policy to be revised and reviewed.

Training on harassment and diversity to all staff and officers.

Sex, Marital Status, Family Status

Area: Provision of Services

Employment

Ground(s): Sex, sexual orientation

Area: Employment

Sector: Transportation

Allegation:

The complainant, a woman who is married to a same-sex partner, works in a male-dominated workplace. She alleged that she was denied advancement as well as training opportunities and was harassed by her co-workers. She eventually had to take a sick leave due to stress at work.

Settlement:

Immediate entry into another group with apprenticeship. Opportunity to take supervisory training.

Adjustment of sick leaves

Counselling services upon request.

Invitation to join the employer's Employment Equity Committee.

Ground(s): Sex, race, national or ethnic origin, colour

Area: Employment

Sector: Transportation

Allegation:

The complainant alleged that she was subjected to harassment in the workplace in the form of racist jokes, sexist comments and nude posters of women. She claims that her employment was terminated because of her complaints of harassment.

Settlement:

Financial compensation for hurt feelings.

Revision of policy on providing references for former employees.

Ground(s): Sex, disability

Area: Employment

Sector: Transportation

Allegation:

The complainant, who worked as a long-haul truck driver, alleged that she was given less work opportunities than her male colleagues. She further alleged that when she became ill, her sick benefits were cancelled and her employment was terminated.

Settlement:

Financial compensation for general damages.

Letter of employment.

Ground(s): Sex, family status

Area: Employment

Sector: Communications

Allegation:

The complainant was off on maternity leave for one year. Prior to her scheduled return, she was advised that her position had been eliminated due to re-structuring. She alleged that she was replaced due to her pregnancy and family status.

Settlement:

Financial compensation for pain and suffering.

Ground(s): Family status

Area: Employment

Sector: Banking

Allegation:

The complainant, who's son has asthma, alleged that she received a warning letter for taking time off to attend to her sick child despite providing a medical note. Subsequently, the complainant was advised that her employment was terminated due to a security breach. She alleged that her employment ended due to her child-related absences.

Settlement:

Financial compensation for general damages.

Ground(s): Sex

Area: Employment

Sector: Federal public service

Allegation:

The complainant had been working for nine months in a one year determinate position when she left for maternity leave. She alleged that the people hired around the same time as her, were given an indeterminate position whereas her contract was not renewed because she went on maternity leave.

Settlement:

Reinstatement in her previous determinate position with retroactive pay
Approval of the complainant's parental leave until she is ready to return to work.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation:

The complainant alleged that she was subjected to sexual harassment in the form of unwelcome comments and gestures from her supervisor. After she complained to the employer, her employment was terminated.

Settlement:

Financial compensation for general damages.
Policy review by the Commission.

Ground(s): Sex

Area: Employment

Sector: Banking

Allegation:

The complainant is pregnant and states that due to frequent pregnancy related illnesses, she decided to relocate to be closer to her family and receive better medical care. She claims that her employer has a policy which allows for a leave of absence of up to 60 days during which time an employee could relocate and find another job within the organization. The complainant alleged that her employer refused to give her a leave of absence because of her pregnancy and as a result she was forced to leave her employment.

Settlement:

Letter of employment.
Distribute the complainant's resume to all branches in the complainant's region.

Ground(s): Sex, family status

Area: Employment

Sector: Other

Allegation:

The complainant was a supervisor for four years prior to her maternity leave. Her employer hired someone to fill her position temporarily. She alleged that after she returned to work, the temporary person was hired permanently and occupied her office. The complainant's possessions were moved to a storage room and the complainant was informed that this was her new office. Her new work assignments were also at a much lower level. The complainant resigned within a month after her return to work.

Settlement:

Financial compensation for pain and suffering and for legal expenses.

Ground(s): Sex

Area: Employment

Sector: Federal public service

Allegation:

The complainant alleged that her employer discriminated against her by refusing to extend her term contract because she was pregnant, thereby making her ineligible for maternity top-up benefits.

Settlement:

Retroactive appointment of the complainant to a term contract.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation:

The complainant alleged that a co-worker made inappropriate comments and advances towards her. After she refused his advances, he initiated a campaign of harassment and defamation that impacted her work. She

continued to the employer, who addressed the situation, but the measures taken were not successful in resolving the situation.

Settlement:

Financial compensation for pain and suffering.

Review of the employer's anti-harassment policy and internal investigations procedures.

Training for all employees in human rights.

Verbal expression of regret.

Ground(s): Sex, family status, race

Area: Employment

Sector: Other

Allegation:

The complainant, who is Caucasian mother with two children, worked for a Native Band Council. She alleged that her co-workers called her names and harassed her because she is not Aboriginal. The complainant's employment was eventually terminated.

Settlement:

Financial compensation for general damages.

Ground(s): Sex, sexual orientation, family status, national or ethnic origin

Area: Employment

Sector: Transportation

Allegation: The complainant alleged that her supervisor and some male co-workers made inappropriate comments about women, gays and certain ethnic groups. Her supervisor told dirty jokes and, on one occasion, a colleague punched her in the breast. To address the situation, the complainant called the Human Resources Department to raise her concerns. The next day, her supervisor informed everyone that she had filed a complaint against them. She alleged that her employer did not handle her complaints properly.

Settlement:

Financial compensation for general damages.

Agreement to place a poster within all Canadian facilities addressing sexual harassment.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant, a female truck driver, alleged that while training as a long-haul truck driver, her trainer made inappropriate comments and called her derogatory names. When she objected, the trainer began treating her in a dismissive manner and refused to accommodate any of her needs on the road trip. After reporting the trainer's behavior to her employer, no actions were taken to correct the situation.

Settlement:

Financial compensation for pain and suffering.

Training in respectful work environments for staff and drivers.

Anti-harassment policy to be revised.

Ground(s): Sex, family status, marital status

Area: Employment

Sector: Transportation

Allegation:

The complainant works as a security officer in an airport. She alleged that co-workers made derogatory comments about her husband and remarks of a sexual nature. She complained to her managers but the problems persisted. Eventually, she had to take some time off due to stress.

Settlement:

Financial compensation for lost wages.

Financial compensation for pain and suffering.

No loss in seniority for taking time off.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation:

The complainant worked in the administrative office of a First Nation group. She alleged that an official repeatedly harassed her by making sexually suggestive remarks and standing over her in an intimidating manner. She asked

him to stop and complained to her supervisor, but her complaint was never investigated. Her employment was terminated while she was on stress leave.

Settlement:

Reimbursement of full tuition fees toward obtaining a university degree.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation:

The complainant alleged that co-workers made inappropriate sexual comments, and that her supervisor treated her harshly. She complained but nothing was done and she eventually had to resign.

Settlement:

Financial compensation for general damages.

The employer will review its harassment policy.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation:

The complainant was dismissed a few months after she was hired. She alleged that the person who dismissed her subjected her to discriminatory comments, saying that a woman should not be a dispatcher, and wrongly accused her of causing the loss of a contract to her employer.

Settlement:

Financial compensation for pain and suffering.

Letter of reference.

Letter confirming that the complainant is not responsible for the loss of a contract.

Sex, Marital Status, Family Status

Area: Employment

Area: Provision of Services

Employment

Ground(s): Sex Area: Employment

Sector: Communications

Allegation: The complainant alleged that a male co-worker displayed pornographic material in a common area and made derogatory comments of a sexual nature. She complained to her employer, but nothing was done to rectify the situation.

Settlement: Financial compensation for pain and suffering.

Training in human rights for all staff and supervisors of the work unit.

Issuance of a no-tolerance statement on inappropriate behaviour and language.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation: The complainant developed complications early in her pregnancy. She alleged that the respondent accommodated her disability for a short period but then refused to continue to accommodate her.

Settlement: Financial compensation for pain and suffering.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation: The complainant worked for a trucking company. She alleged that she was paid less as a customer service representative, a female-dominated position, than she would receive as a dispatcher, a male-dominated position. The company was subsequently sold, and the job description for customer service representatives was substantially changed.

Settlement: Financial compensation for general damages and for legal costs.

Letter of employment.

Ground(s): Sex

Area: Employment

Sector: Federal public service

Allegation: The complainant alleged that she was prevented from completing an employment training program because she became pregnant.

Settlement: Financial compensation for pain and suffering.

Changes to allow for extensions to the training program.

Ground(s): Sex, marital status, family status

Area: Employment

Sector: Transportation

Allegation: The complainant alleged that her supervisor made inappropriate comments about her body and general appearance. She says her hours of work and choice of shifts were reduced after she complained of his behaviour to a manager. Her employment was terminated shortly afterwards. Her husband, who worked for the same employer, was also affected, as he and the complainant were no longer allowed on the company's premises.

Settlement: Financial compensation for general damages.

Letter of reference.

Lifting of the no-trespassing order.

Ground(s): Sex

Area: Employment

Sector: Federal public service

Allegation: The complainant worked in a highly male-dominated environment. She alleged that her colleagues made inappropriate comments of a sexual nature and displayed pornography. She began to suffer from depression and anxiety as a result. Although she complained to her employer, nothing was done. Eventually, her employment was terminated on the grounds that she was too ill to continue working.

Settlement: Financial compensation for hurt feelings and for legal fees.
Retention of the complainant's disability pension.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation: The complainant, a truck driver, alleged that a trainer harassed her and made inappropriate advances and comments during her training period with a transportation company. She further alleged that the company failed to address the situation after she complained.

Settlement: Financial compensation for general damages.

Verbal expression of regret.

Undertaking to develop an anti-harassment policy.

Anti-harassment training for employees.

Ground(s): Sex, marital status, family status

Area: Employment

Sector: Communications

Allegation: The complainant, who is black, alleged that she was treated differently than her white colleagues upon her return from maternity leave. She alleged that her working hours were changed, even though that made it difficult for her to obtain daycare for her child.

Settlement: Financial compensation for pain and suffering and for representation fees.

Ground(s): Sex

Area: Employment

Sector: Communications

Allegation: The complainant alleged that a co-worker harassed her at a social event that took place after working hours during a business trip. She reported the incident but it was not dealt with properly. She felt compelled to move to a different part of the country and take a demotion in order to resolve the situation.

Settlement: Career coaching and leadership assessment services for the complainant.

Financial compensation for general damages.

Sexual harassment training for employees in the area where the complainant worked.

Commitment to deal with the individual involved in the after-hours incident.

Ground(s): Family status

Area: Employment

Sector: Federal public service

Allegation: The complainant participated in a training program before being confirmed in her position. Her husband was one of the trainers and this fact was well known. She alleged that, because of her family status, she was treated differently and harassed. In the end, she decided to resign.

Settlement: Financial compensation for pain and suffering.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation: The complainant worked as an office assistant for a trucking company. She advised her employer that she would be taking maternity leave for the second time in a year. She alleged that, shortly afterwards, she was advised that her position had been eliminated and her employment was terminated. However, she later learned that someone else had been hired to do the same work.

Settlement:

Financial compensation for pain and suffering.

Letter of confirmation of employment.

Amended record of employment.

Ground(s): Sex

Area: Employment

Sector: Federal public service

Allegation: The complainant alleged that after competing for a term position as a counsellor, she was informed that she had won the competition. Later, she told the employer she was pregnant and would be taking maternity leave. She never received a formal job offer and, when she tried to contact the employer, her calls were not returned. She later learned that the position had been filled by another candidate.

Settlement:

Agreement to hire the complainant for the same position and for the same duration after her maternity leave.

Ground(s): Sex

Area: Employment

Sector: Communications

Allegation: The complainant was employed as a salesperson. He alleged that his manager gave more accounts to his female colleagues and that his commissions were lower as a result.

Settlement:

Salary continuance for five months.

Financial compensation for pain and suffering and for legal fees.

Outplacement services for three months.

Letter of employment.

Ground(s): Sex

Area: Employment

Sector: Banking

Allegation: The complainant was employed as a trainee sales representative. She became pregnant during her probation period. After she informed her superiors, she was dismissed without warning for poor performance. She alleged that her performance was a pretext and that she was fired because she was pregnant.

Settlement:

Financial compensation for general damages and for loss of benefits.

Letter of reference.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation: The complainant was hired to drive a freight truck between Canada and the United States. At the time she was hired, she was the only woman employed at the company as a driver. She alleged that the employer did not give her any trips, claiming that business was slow, but that it offered trips to one of the men who was hired after she was. Eventually, her employment was terminated.

Settlement:

Financial compensation for pain and suffering.

Ground(s): Sex

Area: Employment

Sector: Transportation

Allegation: The complainant worked for a trucking company. He alleged that he was sexually harassed by two male colleagues over a period of 10 years. He reported the incidents several times, but his employer did nothing substantial to prevent the harassment. He eventually left work on stress leave and subsequently submitted his resignation.

Settlement:

Financial compensation for general damages and for expenses.

Revision of anti-harassment policy.

Harassment training in the workplace.

Letter of reference.

Letter of regret.

Ground(s): Sex

Area: Employment

Sector: Other

Allegation: The complainant alleged that her supervisor sexually harassed her. He sent her pornographic e-mails and made degrading comments about women.

Settlement:

Donation to a women's shelter.

Agreement to enroll in a course on workplace harassment.

Letter of apology.